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A

TREATISE

OF

MONARCHY,

Containing two Parts

1. Concerning Monarchy in general.
2. Concerning this Particular Monarchy.

Wherein all the main Queſtions occurrent in both, are ſtated, diſputed, and determined.

Done by an earneſt Deſirer of his Countries Peace.

(BY PHILIP HUNTON)

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THE PREFACE.

I Write not this Diſcourſe to heighten Diſſention in the Kingdom; but if poſſible to cure, or at leaſt to allay it: The former, too many have done already, the latter, much too few.

When a Patient lies ſick under the deſtroying paroxiſms of a Fever, every ſtander by will be telling his Medicine, though he be no Phyſitian. O then let no Son of this State account it preſumption in me, for putting in my jugdment, and ſpeaking that which I conceive might, if not remove, yet mitigate the diſtemperature of our common Mother.

I intend not theſe enſuing Diſputes to any high-flown judgments, who look

down on all mens, but their own, to cenſure, not to be informed; not to any which hath deſigns of his own; nor to any who is already poſſeſſed by an opinion, which he reſolves to make good: But to the calm and impartial ſpirit of every judicious man; Let him weigh my Aſſertions by my grounds on which I build them, and if he find them any where unſound, let him ſhew me in what, and I will gladly and thankfully reform my errour: For as I love not obſtinacy in groundleſs opinions in others, ſo I would avoid it my ſelf.

I have not annexed my *Name*, not that I am aſhamed to own what I conceive to be the truth; but becauſe I know who I am, and that my Name could add no eſtimation to the Treatiſe: Nor do I deſire it ſhould: They who

who ſearch for Truth muſt regard *Things*, not *Perſons*: give me therefore the *common Liberty* to go nameleſs; many have taken it for worſe ends. If any condemn me for any thing here, it muſt be for endeavouring a thankleſs Moderation 'twixt two Extreames. But I will detain you no longer at the door.

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A TREA-

A TREATISE OF MONARCHY.

PART I.

CHAP. I.

Of Political Government, and its Diſtinction into ſeveral kinds.

GOvernment and Subjection are Relatives, ſo that what is ſaid of the one, may in proportion be ſaid of the other: Which being ſo, it will be needleſs to treat of both; becauſe it will be eaſie to apply what is ſpoken of one to the other. Government is *Poteſtatis Exercitium*, the exerciſe of a Moral Power. One of theſe is the Root and Meaſure of the other; which if it exceed is exorbitant, is not Government but a Tranſ- Sect. 1.

greſſion of it. This Power and Government is differenced with reſpect to the Governed, to wit, a Family, which is called *Oeconomical*; or a publick Society, which is called *Political* or Magiſtracy. Concerning this Magiſtracy we will treat 1. In general. 2. Of the principal kind of it.

In general concerning Magiſtracy, there are two things about which I find difficulty and difference, *viz.* the Original and the End.

Authority, how far from God, how far from men:

Firſt for the Original, there ſeem to be two extremes in Opinion, while ſome amplifie the Divinity thereof; others ſpeak ſo ſlightly of it as if there were little elſe but humane Inſtitution in it: I will briefly lay down my apprehenſions of the evident truth in this point; and it may be things being clearly and diſtinctly ſet down, there will be no real ground for contrariety in this matter. Three things herein muſt neceſſarily be diſtinguiſhed, *viz.* 1. The Conſtitution of Power of Magiſtracy in general. 2. The limitation of it to this or that kind. 3. The determination of it to this or that Individual Perſon or Line.

For the firſt of theſe, 1. It is Gods expreſs Ordinance, that in the ſocieties of Mankind there ſhould be a Magiſtracy or Government: At firſt when there were but two, God ordained it, *Gen.* 3. 16. St. *Paul* affirms as much of the Powers that be none excepted, *Rom.* 13. 1. 2. This power whereever placed ought to be reſpected as a participation

tion of divine Soveraignty, *Pſal.* 82. 1. 6. and every ſoul ought to be ſubject to it for the *Lords ſake*, 1 *Pet.* 2. 13. that is for Conſcience ſake of Gods Ordinance, *Rom.* 13. 5. and under penalty of Damnation, *v.* 2. Theſe are Truths againſt which there is no colour of oppoſition, indeed this power may be claimed by them who have it not, and where there is a limitation of this power, ſubjection may be claimed in caſes which are without thoſe limits: But to this Ordinance of Power where it is, and when it requires ſubjection, it muſt be given as before.

For the ſecond, 1. In ſome particular Communities the limitation of it to this or that kind, is an immediate Ordinance of God: So Kingly Power was appointed to the Jews on their deſire, 1 *Sam.* 8. 9. whether they had not a kind of Monarchical Government before, I will not ſtand on it; but it is evident that then, on their earneſt deſire, God himſelf condeſcended to an eſtabliſhment of Regality in that State. 2. But for a general binding Ordinance, God hath given no word either to command or commend one kind above another: Men may, according to their Relations to the form they live under, to their affections and judgments in divers reſpects, prefer this or that form above the reſt; but we have no divine limitation, and it were an abſurdity to think ſo; for then we ſhould uncharitably condemn all the Communities which have not that form; for violation of Gods Ordinance, and pronounce thoſe other

powers unlawful. 3. This then muſt have another and lower Fountain to flow from, which can be no other than humane. The higher Power is Gods Ordinance: That it reſideth in one or more in ſuch or ſuch a way, is from humane deſignment; for when God leaves a matter indifferent, the reſtriction of this indifferency is left to ſecondary cauſes: And I conceive this is St. *Peter*'s meaning, when he calls Magiſtracy ἀνθρωπίνη κτίσις, Humane Creature; St. *Paul* calls it *Gods Ordinance*, becauſe the power is *Gods*, St. *Peter* calls it humane Ordinance, becauſe the ſpecification of it to this or that form is from the ſocieties of mankind. I confeſs it may be called a humane Creature in regard of its ſubject, which is a man or men; or its end which is to rule over men for the good of men: But the other ſeems more natural, and it induces no diſparagement to Authority being ſo underſtood. But however you take that place, yet the thing affirmed ſtands good, that God by no word binds any people to this or that form, till they by their own act bind themſelves.

For the third, the ſame is to be ſaid of it as of the ſecond: Some particular men we find whom God was pleaſed by his own immediate choice to inveſt with this his Ordinance of Authority, *Moſes*, *Saul*, *David*; yea God by his immediate Ordinance determined the Government of that people to *David*'s Poſterity and made it ſucceſſive; ſo that that People after his appointment and word was made known to them, and the room void by

by *Saul*'s death, was as immediately bound by divine Law to have *David* and his Sons after him to be Magiſtrates, as to Magiſtracy it ſelf. But God hath not done ſo for every people; *a ſcriptum eſt* cannot be alledged for the endowing this or that perſon or ſtock with Soveraignty over a Community: They alone had the priviledge of an extraordinary word, all others have the ordinary and mediate hand of God to enthrone them: They attain this determination of Authority to their perſons, by the tacite and virtual, or elſe expreſs and formal conſent of that ſociety of men they govern, either in their own perſons or the root of their ſucceſſion; as I doubt not in the ſequel it will be made appear. But let no man think that it is any leſſening or weakning of Gods Ordinance in them, to teach that it is annexed to their Perſons by a humane mean; for though it be not ſo full a Title to come to it by the ſimple Providence of God, as by the expreſs Precept of God; yet when by the diſpoſing hand of Gods Providence, a Right is conveyed to a Perſon or Family, by the means of a publick fundamental Oath, Contract and agreement of a State; it is equivalent then to a divine word, and within the bounds of that publick agreement the conveyed power is as *obligatory* as if an immediate word had deſigned it. Thus it appears that they which ſay there is *divinum quiddam* in Soveraigns, and that they have their power from God, ſpeak in ſome ſence truth, as alſo they which ſay that originally power is in the People,

may in a ſound ſence be underſtood; and in theſe things we have Dr. *Fern*'s conſent in his late diſcourſe upon this ſubject, *Sect.* 3.

Sect. 2. *Whether the end of Government be the Peoples good?*

For the end of Magiſtracy, to ſet out that is no hard matter, if we conſider what was looked at when God ordained it; that was the good of the ſociety of men over which it is ſet: So St. *Paul*, *Rom.* 13. 4. σοι εἰς τὸ ἀγαθὸν. God aimed at it in the inſtitution of Government, and ſo do all men in the choice of it, where they may be chooſers; ſuch a Government and ſuch Perſons to ſway it, as may moſt conduce to publick weal. Alſo it is the meaſure of all the acts of the Governour, and he is good or bad according as he uſes his power to the good of the State wherewith he is intruſted. That is the end but not the ſole end, the preſervation of the Power and Honour of the Governour is an end too, but I think not co-ordinate but ſubordinate to the other; becauſe doubtleſs in the Conſtitution of Government that is firſt thought on, and this in congruity to that: Alſo the reaſon why the Power and Honour of the Magiſtrate muſt be preſerved, is for the publick ſocieties ſake, becauſe its welfare depends thereon; and if it fall out that one of them muſt ſuffer, every good Magiſtrate will deſcend ſomething from his greatneſs, be it for the good of the Community. On the other ſide, though every Subject ought for the honour and good of the Magiſtrate, to give up his private, yet none ought to advance the greatneſs of his

his Soveraign with the publick detriment: Whence in my apprehenſion the end of Magiſtracy is the good of the whole Body, Head and Members conjunctly; but if we ſpeak *diviſim*, then the good of the Society is the ultime end, and next to that as conducent to that, the Governors Greatneſs and Prerogative: And herein alſo accordeth Dr. *Fern* with us, *Sect.* 3. where he ſays that the People are the end of the governing Power. There is another queſtion of mainer concernment, here in our general diſcourſe of Authority fitly to be handled, *viz.* How far Subjection is due to it? But becauſe it hath a great dependance on the kinds and States of Power, and cannot be ſo well conceived without the precognition thereof, I will refer it to after opportunities.

Sect. 3. *Diviſion of Magiſtracy.*

For the diviſion of this Power of Magiſtracy, it cannot be well divided iuto ſeveral ſpecies; for it is one ſimple thing, an indiviſible Beam of Divine Perfection; yet for our more diſtinct conceiving thereof, men have framed ſeveral diſtinctions of it: So with reſpect of its meaſure it is abſolute or limited, in reſpect of its manner it is, as St. *Peter* divides it, Supreme or Subordinate; in reſpect of its mean of acquiring, it is Elective or Succeſſive; for I conceive that of Conqueſt and preſcription of uſage, are reducible to one of theſe as will appear afterwards: In reſpect of its degrees it is *Nomothetical* or *Architectonical*, and *Gubernative* or *Executive*, and in reſpect of the

Subject of its Residence, there is an ancient and usual distinction of it into *Monarchical*, *Aristocratical* and *Democratical*. These either simple or mixt of two, or all three together, of which the *Predominant* gives the denomination. These are not *accurate specificative*, Divisions of Power, for it admits none such, but partitions of it according to divers respects. The course of my intention directs me to speak only of *Monarchical* Power, which is the chief and most usual form of Government in the world; the other two being apt to resolve into this, but this not so apt to dissolve into them.

CHAP. II.

Of the Division of Monarchy into Absolute and Limited.

Sect. 1. NOw we must know that most of those distinctions which were applyed to Power in general, are appliable to Monarchy; because the respects on which they arise are to be found in it. But I will insist on the three main divisions, for the handling of them will bring us to a clear understanding of what is needful to be known about *Monarchical* Power.

First, Of the distinction of *Monarchy* into Absolute and Limited: Absolute *Monarchy* is when the Soveraignty is so fully in one, that

that it hath no limits or bounds under God but his own Will. It is when a people are absolutely resigned up, or resign up themselves to be Governed by the will of one man. Such were the ancient *Eastern Monarchies*, and that of the *Persian* and *Turk* at this day, as far as we know. This is a lawful Government, and therefore where men put themselves into this utmost degree of subjection by *Oath* and Contract, or are born and brought unto it by Gods Providence, it binds them and they must abide it, because an *Oath* to a lawful thing is *obligatory*. This in Scripture is very evident, as *Ezek.* 17. 16, 18, 19. where Judgment is denounced against the King of *Judah* for breaking the Oath made to the King of *Babylon*, and it is called Gods Oath; yet doubtless this was an Oath of absolute subjection: And *Rom.* 13. the power which then was, was absolute; yet the Apostle not excluding it calls it *Gods Ordinance*, and commands subjection to it: So Christ commands Tribute to be paid, and pays it himself; yet it was an Arbitrary Tax, the production of an absolute power. Also the Soveraignty of Masters over Servants was absolute, and the same in Oeconomy as absolute Monarchy is in policy, yet the Apostle enjoyns not Masters called to Christianity to renounce that Title, as too great and rigid to be kept, but exhorts them to moderation in the exercise of it; and Servants to remain contented in the condition of their servitude. More might be said to legitimate this kind of Government, but it needs

whether absolute Monarchy be a lawful Government.

needs not in ſo plain a caſe.

Sect. 2. *Three degrees of abſoluteneſs.*

This abſolute Monarchy hath three degrees, yet all within the ſtate of abſoluteneſs. The firſt, when the Monarch, whoſe will is the Peoples Law, doth ſet himſelf no ſtated Rule or Law to Rule by, but by immediate Edicts and Commands of his own Will governs them, as in his own and Councils judgment he thinks fit. Secondly, when he ſets down a Rule and Law by which he will ordinarily Govern, reſerving to himſelf liberty to vary from it, wherein and as oft as in his diſcretion he judges fit; and in this the Soveraign is as free as the former, only the people are at a more certainty what he expects from them in ordinary. Thirdly, when he not only ſets down an expreſs Rule and Law to govern by, but alſo promiſeth and engages himſelf in many caſes not to alter that Rule; but this engagement is an after condeſcent and act of Grace, not diſſolving the abſolute Oath of Subjection which went before it, nor is intended to be the rule of his power but of the exerciſe of it. This Ruler is not ſo abſolute as the former in the uſe of his power, for he hath put a bond on that which he cannot break without breach of promiſe, that is without Sin; but he is as abſolute in his power, if he will ſinfully put it forth into act; it hath no politick bounds, for the people ſtill owe him abſolute ſubjection, that not being diſſolved or leſſened by an Act of Grace coming afterwards.

Now

Now in Governments of this nature, how far obedience is due, and whether any reſiſtance be lawful, is a queſtion which here muſt be decided. For the due effecting whereof, we muſt premiſe ſome needful diſtinctions to avoid confuſion. Obedience is twofold; Firſt Poſitive and Active, when in Conſcience of an Authority we do the thing Commanded. Secondly Negative and Paſſive, when, though we anſwer not Authority by doing, yet we do it by contented undergoing the penalty impoſed. Proportionably, Reſiſtance is twofold, Firſt Poſitive, by an oppoſing of force; Secondly Negative, when only ſo much is done as may defend our ſelves from force, without return of force againſt the Aſſailant. Now, this Negative Reſiſtance is alſo twofold: Firſt in inferior and ſufferable caſes; ſecondly or in the ſupreme caſe and laſt neceſſity of life and death, and then too it is firſt either of particular Perſon or Perſons: Secondly or of the whole Community: And if of particular perſons, then either under plea and pretence of equity aſſaulted, or elſe without any plea at all, merely for will and pleaſure ſake; for to that degree of rage and cruelty ſometimes the heart of man is given over. All theſe are very diſtinguiſhable caſes, aud will be of uſe either in this or the enſuing diſputes. Sect. 3. *whether Reſiſtance be lawful in abſolute Monarchy.*

To the queſtion I ſay, Firſt Poſitive Obedience is abſolutely due to the will and pleaſure of an abſolute Monarch, in all lawful and Aſſert. 1.

and indifferent things; becauſe in ſuch a State the will of the Prince is the ſupreme Law, ſo that it binds to Obedience in every thing not prohibited by a Superior, that is Divine Law; for it is in ſuch caſe the higher Power and is Gods Ordinance.

Aſſert. 2. Secondly, When the will of an abſolute Monarch commands a thing forbidden to be done by Gods Law, then it binds not to active obedience; then is the Apoſtles Rule undoubtedly true, *It is better to obey God than men*; for the Law of the Inferior gives place to the Superior. In things defined by God, it ſhould be all one with us for the Magiſtrate to Command us to tranſgreſs that, as to Command us to an impoſſibility, and impoſſibilities fall under no Law. But on this ground no man muſt quarrel with Authority, or reject its Commands as unlawful, unleſs there be an open unlawfulneſs in the face of the Act commanded. For if the unlawfulneſs be hidden in the ground or reaſon of the Action, Inferiors muſt not be curious to enquire into the grounds or reaſons of the Commands of Superiors; for ſuch Licenſe of Enquiry would often fruſtrate great undertakings, which much depend on ſpeed and ſecrecy of Execution. I ſpeak all this of abſolute Government, where the Will and Reaſon of the Monarch is made the higher Power, and its expreſſion the ſupreme Law of a State.

Aſſert. 3. Thirdly, Suppoſe an abſolute Monarch ſhould ſo degenerate into monſtrous unnatural Tyranny, as apparently to ſeek the deſtruction

ſtruction of the whole Community, ſubject to him in the loweſt degree of Vaſſallage, then ſuch a Community may negatively reſiſt ſuch ſubverſion; yea, and if conſtrained to it by the laſt neceſſity, poſitively reſiſt and defend themſelves by force againſt any inſtruments whatſoever employed for the effecting thereof. 1. *David* did ſo in his particular caſe, when purſued by *Saul*: He made negative reſiſtance by flight, and doubtleſs he intended poſitive reſiſtance againſt any inſtrument, if the negative would not have ſerved the turn, elſe why did he ſo ſtrengthen himſelf by Forces? ſure not to make poſitive reſiſtance, and lay violent hands upon the Perſon of the Lords Anointed, as it appeared; yet for ſome reaſon he did it doubtleſs, which could be none other but by that force of Arms to defend himſelf againſt the violence of any miſemployed inferior hands. If then he might do it for his particular ſafety, much rather may it be done for the publick. 2. Such an Act is without the compaſs of any of the moſt abſolute Potentate, and therefore to reſiſt in it can be to reſiſt no power, nor the violation of any due of ſubjection. For firſt, the moſt ſubmiſs ſubjection ever intended by any Community, when they put themſelves under anothers power, was the Command of a reaſonable Will and Power; but to Will and Command the deſtruction of the whole Body over which a Power is placed, were an Act of Will moſt unreaſonable and Self-deſtructive, and ſo not the Act of ſuch a Will, to which

Sub-

Subjection was intended by any reaſonable Creatures. Secondly, the Publick Good and Being is aimed at in the utmoſt bond of Subjection; for in the conſtitution of ſuch unlimited Soveraignty, though every particular mans good and being is ſubjected to the Will of one Supreme, yet certainly the conſervation of the whole Publick was intended by it, which being invaded, the intent of the Conſtitution is overthrown, and an Act is done which can be ſuppoſed to be within the compaſs of no Political Power: So that did *Nero* as it was reported of him, in his Immanity thirſt for the deſtruction of whole *Rome*; and if he were truly what the Senate pronounced him to be, *Humani generis hoſtis*, then it might juſtifie a negative reſiſtance of his Perſon, and a poſitive of any Agent ſhould be ſet on ſo inhumane a ſervice. And the united Provinces are allowed in reſiſting *Philip* the Second, thongh he had been their abſolute Monarch, if he reſolved the extirpation of the whole People, and the planting the Country with *Spaniards*, as it is reported he did: And that Aſſertion of ſome that *all* reſiſtance is againſt the Apoſtles prohibition. Reſiſtance by power of Arms is utterly unlawful, cannot be juſtified in ſuch a latitude; but of this more will be ſpoken in the current of this diſcourſe.

Aſſert. 4. Fourthly, Suppoſe by ſuch a Power any particular Perſon or Perſons life be invaded, without any plea of reaſon or cauſe for it, I ſuppoſe it hard to deny him liberty of negative

tive Reſiſtance of Power, yea and poſitive of any Agents in ſuch aſſault of murther; for though the caſe be not ſo clear as the former, yet it ſeems to me juſtified by the fact of *David*, and the reſcuing of *Jonathan* from the cauſeleſs cruel intent of his Father's putting him to death: As alſo ſuch an Act of Will carrying no colour of Reaſon with it, cannot be eſteemed the Act of a rational Will, and ſo no Will intended to be the Law of Soveraignty. Not that I think a Monarch of ſuch abſoluteneſs is bound to yield a reaſon, why he Commands any man to be put to death before his Command be obeyed; but I conceive the Perſon ſo commanded to death may be juſtified before God and Men, for protecting himſelf by eſcape or otherwiſe, unleſs ſome reaſon or cauſe be made known to him of ſuch Command.

Fifthly, Perſons ſubject to an unlimited Dominion, muſt without reſiſtance ſubject their Eſtates, Liberties, Perſons, to the Will and Pleaſure of their Lord, ſo it carry any plea or ſhew of Reaſon and Equity. Firſt, it ſeems to me evident, 1 *Pet.* 2. 18, 19, 20. if well doing be miſtaken by the reaſon and judgment of the power for ill doing, and we be puiſhed for it, yet the Magiſtrate going according to his miſguided reaſon, it is the command of a reaſonable will, and ſo to be ſubmitted to, becauſe ſuch a one ſuffers by Law, in a State where the Lords will is the Law. Secondly, In Commands of the Power where is the Plea of Reaſon and Equity on the part of the Aſſert. 5.

the Commander, whether it be ſuch indeed ſome power muſt judge, but the conſtitution of abſolute Monarchy reſolves all judgment into the will of the Monarch, as the Supreme Law; ſo that if his will judicially cenſure it juſt, it muſt be yielded to as if it were juſt, without repeal or redreſsment by any created power. And let none complain of this as a hard condition, when they or their Anceſtors have ſubjected themſelves to ſuch a Power by Oath or political Contract: If it be Gods Ordinance to ſuch, it muſt be ſubjected to and its exorbitances born, as he ſays in *Tacitus*, as men bear Famine, Peſtilence, and other effects of Gods diſpleaſure.

Aſſert. 6. Sixthly, In abſolute Monarchy the Perſon of the Monarch is above the reach of juſt force and poſitive reſiſtance, for ſuch a full reſignation of mens ſelves to his Will and Power, by the irrevocable Oath and Bond of Politick Contract, doth make the Perſon as ſacred as the Unction of *Saul* or *David*. In ſuch a State all lawful Power is below him, ſo that he is uncapable of any penal hand, which muſt be from a Superior, or it is unjuſt. I have been the longer on this abſolute Monarchy, becauſe though it doth not concern us, yet it will give light to the ſtating of doubts in Governments of a more reſtrained nature; for what is true here in the full extent of Power, is there alſo as true within the compaſs of their power.

Sect. 4. In moderate or limited Monarchy it is an enquiry

enquiry of ſome weight to know, *What it is which conſtitutes it in the State of a limited Monarchy.* *What makes a Monarchy limited.*

Aſſert. 1. Firſt, A Monarchy may be ſtinted in the exerciſe of its power, and yet be an abſolute Monarchy, as appeared before in our diſtinction of abſolute Monarchy; if that bounds be a ſubſequent Act and proceeding from free will and grace in the Monarch; for it is not the exerciſe but the nature and meaſure of power wherewith he is radically inveſted, which denominates him a free or conditionate Monarch.

Aſſert. 2. Secondly, I take it that a limited Monarch muſt have his bounds of Power *ab externo*, not from the free determination of his own will. And now Kings have not divine words and binding Laws to Conſtitute them in their Soveraignty, but derive it from ordinary Providence, the ſole mean hereof is the conſent and fundamental Contract of a Nation of men, which conſent puts them in their power, which can be no more nor other than is conveyed to them by ſuch contract of ſubjection. This is the root of all Soveraignty individuated and exiſtent in this or that Perſon or Family, till this come and lift him up he is a private man, not differing in ſtate from the reſt of his Brethren; but then he becomes another man, his Perſon is ſacred by that Soveraignty conveyed to it, which is Gods Ordinance and Image. The truth hereof will be more fully diſcovered, when we come to ſpeak of Elective and Succeſſive Monarchy.

Assert. 3. Thirdly, He is then a limited Monarch who hath a Law beſide his own Will for the meaſure of his power. Firſt, the ſupreme power of the State muſt be in him, ſo that his power muſt not be limited by any power above his, for then he were not a Monarch but a ſubordinate Magiſtrate. Secondly, This Supreme Power muſt be reſtrained by ſome Law according to which this Power was given, and by direction of which this Power muſt act; elſe he were not a limited Monarch, that is a Liege Soveraign or legal King. Now a Soveraignty comes thus to be legal or deſined to a Rule of Law, either by original Conſtitution or by after-condeſcent. By original Conſtitution, when the ſociety publick confers on one man a power by limited Contract, reſigning themſelves to his Government by ſuch a Law, reſerving to themſelves ſuch immunities: In this caſe they which at firſt had power over themſelves, had power to ſet their own terms of ſubjection; and he which hath no Title of Power over them but by their act, can *de jure* have no greater than what is put over to him by that act. By after-condeſcent, *viz.* when a Lord who by Conqueſt or other right hath an abſolute arbitrary power; but not liking to hold by ſuch a right, doth either formally or virtually deſert it, and take a new legal right as judging it more ſafe for him to hold by, and deſirable of the people to be governed by. This is equivalent to that by original Conſtitution, yea is all one with it; for this is in that reſpect a ſecondary original Conſtitution. But if it be

be objected that this being a voluntary condescent is an act of Grace, and so doth not derogate from his former absoluteness, as was said before of an absolute Monarch, who confines himself to govern by one Rule; I answer, this differs essentially from that, for there, a free Lord, of Grace yields to Rule by such a Law, reserving the fulness of power, and still requiring of the people a Bond and Oath of utmost indefinite subjection; so that it amounts not to a limitation of radical power: Whereas here is a change of Title and a resolution to be subjected to, in no other way than according to such a frame of Government; and accordingly no other Bond or Oath of Allegiance is required or taken, than according to such a Law. This amounts to a limitation of radical power, and therefore they speak too generally who affirm of all acts of Grace proceeding from Princes to People, as if they did not limit absoluteness: 'Tis true of acts of Grace of that first kind, but yet you see an act of Grace may be such a one, as may amount to a resignation of that absoluteness into a more mild and moderate power, unless we should hold it out of the power of an absolute Lord to be other, or that by free condescent and act of grace, a man cannot as well part with or exchange his Right and Title to a thing, as define himself in the use and exercise; which I think none will affirm.

Sect. 5. In all Governments of this allay and Legal Constitution, there are three Questions of

ſpecial moment to be conſidered.

How far Subjection is due in a limited Monarchy:

Firſt, How far Subjection is due. As far as they are Gods Ordinance, as far as they are a power; and they are a Power as far as the Contract fundamental, from which, under God, their Authority is derived, doth extend. As abſolute Lords muſt be obeyed, as far as their Will enjoyns, becauſe their will is the meaſure of their Power and their Subjects Law; ſo theſe in the utmoſt extent of the Law of the Land, which is the meaſure of their power, and their Subjects duty of obedience. I ſay ſo far, but I do not ſay no further; for I believe though on our former grounds it clearly follows that ſuch Authority tranſcends its bounds if it command beyond the Law, and the Subject legally is not bound to Subjection in ſuch caſe; yet in Conſcience a Subiect is bound to yield to the Magiſtrate, even when he cannot *de jure* challenge Obedience, to prevent ſcandal or any occaſion of ſlighting the power which may ſometimes grow even upon a juſt refuſal: I ſay for theſe cauſes a Subject ought not to uſe his liberty, but *morem gerere*, if it be in a thing in which he can poſſibly without ſubverſion, and in which his act may not be made a leading caſe, and ſo bring on a preſcription againſt publick Liberty.

Sect. 6. *How far it is lawful to reſiſt?* Poſ. 1.

Secondly, How far it is lawful to reſiſt the exorbitant illegal Commands of ſuch a Monarch. 1. As before in lighter caſes, in which it may be done for the reaſons alledged, and for the ſake of publick peace, we ought to ſubmit

ſubmit, and make no reſiſtance at all, but *de jure recedere.*

2. In Caſes of higher nature, Paſſive reſiſtance, *viz.* By appeal to Law, by Concealment, by Flight is lawful to be made, becauſe ſuch a Command is politically powerleſs. it Proceeds not from Gods Ordinance in him: and ſo we ſin not againſt Gods Ordinance in ſuch Non-ſubmiſſion, or Negative reſiſtance. Poſ. 2.

3. For Inſtruments or Agents in ſuch commands, if the ſtreight be ſuch, and a man be ſurprized, that no place is left for an appeal nor evaſion by Negative Reſiſtance; I conceive, againſt ſuch, Poſitive Reſiſtance may be made: becauſe authority failing or this Act in the Supreme Power, the Agent or Inſtrument can have none derived to him; and ſo is but in the nature of a private perſon, and his Act, as an offer of private violence, and ſo comes under the ſame rules for oppoſition. Poſ. 3.

4. For the perſon of the Soveraign, I conceive it, as well above any Poſitive Reſiſtance, as the Perſon of an abſolute Monarch, Yea, thongh by the whole Community, (except there be an expreſs reſervation of Power in the body of the State, or any deputed Perſons or Court, to uſe (in caſe of intolerable exorbitance, Poſitive Reſiſtance,) which, if there be, then ſuch a Governour is no Monarch) for that fundamental Reſervation deſtroyes it's being a Monarchy in aſmuch as the ſupreme Power is not in oue.) For where ever there is a Soveraign politick Poſ. 4.

Power conſtituted, the perſon or perſons who are inveſted with it are Sacred, and out of the reach of poſitive Reſiſtance or Violence: which, as I ſaid, if juſt, muſt be from no inferior or ſubordinate hand. But it will be objected, that ſith every Monarch hath his power from the conſent of the whole body, that, conſent of the whole Body hath a Power above the Power of the Monarch, and ſo the reſiſtance which is done by it, is not by an inferior power, and to this purpoſe is brought that Axilome, *Quicquid efficit tale eſt magis tale.* anſwer, That rule even in natural cauſes is lyable to abundance of reſtrictions: And in the particular in hand it holds not. Where the cauſe doth bereave himſelf of that perfection by which it works, in the very act of cauſing, and convey it to that effect, It doth not remain more ſuch then the effect, but much leſs, and below it, as if I convey an eſtate of Land to another, it doth not hold that after ſuch conveyance I have a better Eſtate remaining in me than that other, but rather the contrary; becauſe what was in one is paſſed to the other. The Servant who at the year of *jubile* would not go out free, but have his ear boared, and given his Maſter a full Lordſhip over him: can we argue, that he had afterward more power over himſelf than his Maſter, ſince he gave his Maſter that power him, by that way of Oeconomical Contract. Thus the Community whoſe conſent eſtabliſhes a Power over them cannot be ſaid univerſally to have an eminency of Power above

above that which they conſtitute; ſometimes they have ſometimes they have not: and to judge when they have, when not, reſpect muſt be had to the Original Contract and Fundamental Conſtitution of that State, if they have conſtituted a Monarchy, that is, inveſted one man with the Soveraignty of Power and ſubjected all the reſt to him: Then it were unreaſonable to ſay, they yet have it in themſelves, Or have a power of recalling that Supremacy which by Oath and Contract they themſelves transferred on another: Unleſs we make this Oath and Contract leſs binding then private ones, diſſoluble at pleaſure, and ſo all Monarchs Tenants at will from their people. But if they in ſuch Conſtitution reſerve a power in the body to oppoſe and diſplace the Magiſtrate for exorbitancies, and reſerve to themſelves a Tribunal to try him in, that man is not a Monarch, but the Officer and ſubſtitute of him or them to whom ſuch power over him is reſerved or conferred. The Iſſue is this, If he be a Monarch he hath the *Apex* or *Culmen Poteſtatis*, and all his ſubjects *diviſim* and *conjunctim*, are below him: They have deveſted themſelves of all ſuperiority and no Power left for a Poſitive Oppoſition of the Perſon of him whom they have inveſted.

Sect. 7. *Who ſhall be the Judge of the Exceſſes of the Monarch.*

Thirdly, who ſhall be the judges of the Exceſſes of the Soveraign Lord in Manarchies of this coſſipoſure? I anſwer, A frame of Government cannot be imagined of that perfection, but that ſome inconveniences there will

Power constituted, the person or persons who are invested with it are Sacred, and out of the reach of positive Resistance or Violence: which, as I said, if just, must be from no inferior or subordinate hand. But it will be objected, that sith every Monarch hath his power from the consent of the whole body, that, consent of the whole Body hath a Power above the Power of the Monarch, and so the resistance which is done by it, is not by an inferior power, and to this purpose is brought that Axilome, *Quicquid efficit tale est magis tale.* answer, That rule even in natural causes is lyable to abundance of restrictions: And in the particular in hand it holds not. Where the cause doth bereave himself of that perfection by which it works, in the very act of causing, and convey it to that effect, It doth not remain more such then the effect, but much less, and below it, as if I convey an estate of Land to another, it doth not hold that after such conveyance I have a better Estate remaining in me than that other, but rather the contrary; because what was in one is passed to the other. The Servant who at the year of *jubile* would not go out free, but have his ear boared, and given his Master a full Lordship over him: can we argue, that he had afterward more power over himself than his Master, since he gave his Master that power him, by that way of Oeconomical Contract. Thus the Community whose consent establishes a Power over them cannot be said universally to have an eminency of Power

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above that which they conſtitute; ſometimes they have ſometimes they have not: and to judge when they have, when not, reſpect muſt be had to the Original Contract and Fundamental Conſtitution of that State, if they have conſtituted a Monarchy, that is, inveſted one man with the Soveraignty of Power and ſubjected all the reſt to him: Then it were unreaſonable to ſay, they yet have it in themſelves, Or have a power of recalling that Supremacy which by Oath and Contract they themſelves transferred on another: Unleſs we make this Oath and Contract leſs binding then private ones, diſſoluble at pleaſure, and ſo all Monarchs Tenants at will from their people. But if they in ſuch Conſtitution reſerve a power in the body to oppoſe and diſplace the Magiſtrate for exorbitancies, and reſerve to themſelves a Tribunal to try him in, that man is not a Monarch, but the Officer and ſubſtitute of him or them to whom ſuch power over him is reſerved or conferred. The Iſſue is this, If he be a Monarch he hath the *Apex* or *Culmen Poteſtatis*, and all his ſubjects *diviſim* and *conjunctim*, are below him: They have deveſted themſelves of all ſuperiority and no Power left for a Poſitive Oppoſition of the Perſon of him whom they have inveſted.

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will be poſſible for which there can be provided no remedy. Many miſeries to which a people under an abſolute Monarchy are lyable, are prevented by this Legal Allay and definement of Power. But this is expoſed to one defect from which that is free, that is, an impoſſibility of conſtituting a Judge to determine this laſt controverſie, *viz.* the Soveraigns tranſgreſſing his fundamental limits. This Judge muſt be either ſome Forraigner, and then we loſe the freedom of the State, by ſubjecting it to an external power in the greateſt caſe: or elſe within the body: If ſo then 1. either the Monarch himſelf, and then you deſtroy the frame of the State, and make it abſolute; for to define a Power to a Law, and then to make him Judge of his Deviations from that Law, is to abſolve him from all Law. Or elſe 2. the Community and their Deputies muſt have this power: and then, as before, you put the *apex Poteſtatis*, the *prime αἰρνεῖ* in the whole body, or a part of it, and deſtroy the being of Monarchy: The Ruler not being Gods immediate Miniſter but of that Power, be it where it will, to which he is accomptable for his actions. So that I conceive in a limited legal Monarchy, there can be no ſtated internal Judge of the Monarchs actions, if there grow a fundamental Variance betwixt him and the Community. But you will ſay, It is all one way to abſoluteneſs to aſſign him no Judge, as to make him his own Judge. *Anſw.* I ſay not ſimply in this caſe, there is no Judge: But that there can be no Judge legal and conſtituted

tuted within that frame of Government: but it is a tranſcendent caſe beyond the proviſion of that Government, and muſt have an extraordinary Judge, and way of deciſion.

In this great and difficult caſe, I will deliver my apprehenſions freely and clearly, ſubmitting them to the cenſure of better Judgements. Suppoſe the controverſie to happen in a Government fundamentally legal, and the people no further ſubjected then to Government by ſuch a Law.

1. If the act in which the exorbitance and tranſgreſſion is ſuppoſed to be, be of leſſer moment, and not ſtriking at the very being of that Government, it ought to be born by publick patience, rather than to endanger the being of the State by a contention betwixt the head and body Politick. Poſ. 1.

2. If it be mortal and ſuch as ſuffered, diſſolves the frame and life of the Government and publick liberty: Then the illegality and deſtructive nature is to be ſet open, and redreſment ſought by Petition; which if failing, Prevention by reſiſtance ought to be. But firſt that it is ſuch, muſt be made apparent; and if it be apparent, and an Appeal made *ad conſcientiam generis humani*, eſpecially of thoſe of that Community, then the fundamental Laws of that Monarchy muſt judge and pronounce the ſentence in every mans conſcience; and every man (as farr as concerns him) muſt follow the evidence of Truth in his own ſoul, to oppoſe, or not oppoſe, according as he can in conſcience acquit or condemn Poſ. 2.

condemn the act of carriage of the Governour. For I conceive, in a Case which transcends the frame and provision of the Government they are bound to, People are unbound, and in state as if they had no Government; and the superiour Law of Reason and Conscience must be judge: wherein every one must proceed with the utmost advice and impartiality: For if he err in judgement, he either resists Gods Ordinance, or puts his hand to the subversion of the State and Policy he lives in.

And this power of judging argues not a superiority in those who Judge, over him who is Judged; for it is not Authoratitive and Civil, bnt moral,, residing in reasonable Creatures, and lawful for them to execute, because never devested and put off by any act in the constitution of a legal Government, but rather the reservation of it intended: For when they define the Superiour to a Law, and constitute no Power to Judge of his Excesses from that Law, it is evident they reserve to themselves, not a Formal Authoritative Power, but a moral Power, such as they had originally before the Constitution of the Government; which must needs remain, being not conveyed away in the Constitution.

CHAP.

CHAP. III.

Of the diviſion of Monarchy into Elective and Succeſſive.

THe ſecond diviſion of Monarchy, which I intend to treat of, is that of Elective or Succeſſive. Elective monarchy is that, whereby the fundamental conſtitution of the State, the ſupreme power is conveyed but to the perſon of him whom they take for their Prince; the people reſerving to themſelves power, by men deputed by the ſame conſtitution, to elect a new perſon on the deceaſe of the former. Succeſſive is, where by the fundamental conſtitution of the State, the Soveraignty is conferred on one Prince, and in that one, as a root and beginning to his heirs, after a form and line of ſucceſſion, conſtituted alſo by the fundamentals of that Government. In the firſt, the Peoples oath and contract of ſubjection extends but to one perſon: In the other, to the whole Race and Line of ſucceſſors; which continuing, the bond of ſubjection continues, or which failing, the people return to their firſt liberty, of chooſing a new perſon or ſucceſſion to be inveſted with Soveraignty.

Sect. 1. *Elective and ſucceſſive Monarchy what they are.*

I do conceive that in the firſt original, all Monarchy, yea any individual frame of Government whatſoever, is elective: that is, is conſtituted,

Sect. 2. *All Monarchy whether originally from conſent,*

ted, and draws its force and right from the consent and choice of that Community over which it swayeth. And that triple distinction of Monarchy, into that which is gotten by Conquest, Prescription, or Choice, is not of distinct parts, unless by Choice be meant full and formal Choice: my reason is, because man being a voluntary agent, and subjection being a moral act, it doth essentially depend on consent: so that a man may by force and extremity be brought under the power of another, as unreasonable creatures are, to be disposed of, and trampled on, whether they will or no: But a bond of subjection cannot be put on him, nor a right to claim Obedience and Service acquired, unless a man become bound by some act of his own Will. For, suppose another, from whom I am originally free, be stronger than I, and so bring me under his mercy, do I therefore sin if I do not what he commands me? or can that act of violence pass into a moral title, without a moral principle?

Sect. 3. *Monarchy by divine institution.*

But this will be more manifest, if by induction I shew how other titles resolve into this. I will begin with that of divine institution. *Saul* and *David* were by the Sacrament of anointing designed to the Kingdom, as it were by Gods own hand; which notwithstanding, they were not actually Kings till the Peoples consent established them therein: That unction was a manifestation of the appointment of God, and when it was made known

known to the People, I think it had the power of Precept, to restrain the Peoples choice to that person; which if they had not done, they had resisted Gods ordinance. Yet they were not thereby actually endowed with Kingly power, but remained as private men, till the Peoples choice put them in actuall possession of that power; which in *David* was not till after many years.

Then for that of Usuage or Prescription; if any such did ever constitute a Monarchy, it was by vertue of an universal consent, by that Usuage and Prescription proved and implyed: For in a popular state, where one Man in the Community, by reason of great estate, Wisdom, or other Perfection is in the eye of all the rest, all reverence him, and his advice they follow: and the respect continues from the People to the house and family, for diverse generations. In this case, subjection at first is arbitrary in the people; and if in time it become necessary, it is because their Custom is their Law; and its long continuance is equivalent to a formal Election: so that this Tenure and Right, if it be good and more then at pleasure, as it was at first, the considerate must needs ascribe it to a consent, and implicite choice of the People. Sect. 4. *Monarchy by prescription.*

But the main Question is concerning Monarchy atchieved by Conquest; where at first sight the Right seems to be gotten by the Sword, with Sect. 5. *Monarchy by conquest.*

without the consent and choice of the People, yea against it. Conquest is either 1. Total, where a full Conquest is made, by a total subduing a people to the will of the Victor: or 2. Partial, where an entrance is made by the Sword: But the People either because of the Right claimed by the Invader; or their unwillingness to suffer the Miseries of War, or their apparent inability to stand out in a way of Resistance, or some other consideration, submit to a composition and contract of subjection to the Invader. In this latter it is evident, the Soveraigns Power is from the Peoples consent; and the Government is such as the Contract and fundamental agreement makes it to be, if it be the first Agreement, and the pretender hath no former Title which remains in force; for then this latter is invalid, if it include not and amount to a relinquishing and disanulling of the Old. But the difficulty is concerning a full and meer Conquest; and of this I will speak my mind clearly. Such a War and Invasion of a People, which ends in a Conquest, 1. it is either upon the pretence or claim of a Title of Soveraignty over the People invaded: and then, if the pretender prevail, it is properly no Conquest, but the vindication of a Title by force of Arms. And the Government is not Original, but such as the Title is by which he claims it. 2. Or it it is by One who hath no challenge of Right descending to him to justifie his claim and Invasion of a People: Then if he subdue, he may properly be said

to

to come to his Government by Conqueſt.

And there be who wholly condemn this title of Conqueſt as unlawful, and take it for nothing elſe but a national and publick robbery: ſo one of the Anſwerers to Doctor *Fern* ſaies in his p. 10. *Conqueſt may give ſuch a right as Plunderers uſe to take in houſes they can maſter——It is inhumane to talk of right of Conqueſt in a Civil, in a Chriſtian State.* But I cannot allow of ſo indefinite a Cenſure: rather I think the right of Conqueſt is ſuch as the precedent War was: if that were lawful, ſo is the Conqueſt: For a Prince may be invaded, or ſo far injured by a neighbour people, or they may be ſet on ſuch a pernicious enmity againſt him and his people, that the ſafety of himſelf and people may compel to ſuch a War, which War if it end in Conqueſt, who can judge ſuch Title unlawful? Suppoſe then Conqueſt may be a lawful way of acquiſition: yet an immediate cauſe of right of Soveraignty; that is, of a Civil power of Government to which obedience is due, it cannot be: I ſay, an immediate cauſe, for a remote impulſive cauſe it oft is, but not an immediate cauſe; for that muſt ever be the conſent of the people, whereby they accept of, and reſign up themſelves to a Government, and then their Perſons are morally bound, and not before. Thus far the force of conqueſt may go; it may give a man title over, and power to poſſeſs and diſpoſe of the Country and Goods of the Conquered;

whether conqueſt give a juſt title.

quered; yea, the Bodies and Lives of the Conquered are at the Will and Pleasure of the Conqueror: But it still is at the Peoples choice to come into a moral condition of subjection or not. When they are thus at the mercy of the Victor, if to save life they consent to a condition of servitude or subjection, then that Consent, Oath or Covenant, which they in that extremity make, being in *re licita*, bindes them, and they owe moral Duty. But if they would rather suffer the utmost violence of the Conqueror, and will consent to no terms of subjection, as *Numantia* in *Spain*, and many other People have resolved; they die or remain a free People. Be they captived or possessed at pleasure, they owe no duty, neither do they sin in not obeying; nor do they resist Gods ordinance, if at any time of advantage they use force to free themselves from such a violent possession: yea perhaps, if before by contract they were bound to another, they should sin if to avoid death or bondage they should swear or covenant fealty to a Conqueror; and it were more noble and laudable to die in the service, and for the faith to their natural Soveraign. Thus I am perswaded it will appear an uncontrolable truth in Policy, that the consent of the People, either by themselves or their Ancestors is the only mean in ordinary providence by which soveraignty is conferred on any Person or Family: neither can Gods ordinance be conveyed, and People engaged in conscience by any other means.

It

It hath been affirmed by ſome, that mixture and limitation is inconſiſtent to ſucceſſive Monarchy; as if where ever Soveraignty is entailed to a ſucceſſion, it muſt needs be abſolute: But I muſt profeſs I cannot ſee how it can ſtand with truth: rather I think, that both Elective and Hereditary Monarchy are indifferently capable of abſoluteneſs or limitation. If a free, and not preingaged People to any Government, by publick compact yield up themſelves to a perſon, to be commanded by his Will as their ſupreme Law, during his natural life, and no longer, can it be denied but that he is an abſolute, and yet Elective Monarch? unleſs you will ſay, he is not abſolute, becauſe he cannot by his Will, as by a Law, bind them to elect his ſon to ſucceed him, and change their Government into hereditary. But his being limited in this Clauſe doth not diſparage his Soveraignty, or make his power of Government limited, becauſe this belongs not to preſent Government, but is a meer proviſion for the future. Again, if the power of Ruling according to a Law, be by conſent conveyed to one Perſon, and his Heirs to ſucceed after him, how this ſhould come to be abſolute and the intailment ſhould overthrow the conſtitution, I cannot imagine: If the whole latitude of power may be by a People made hereditary ſure a proportion may be as well; unleſs the limitation be ſuch as includes a repugnancy to be perpetual. Indeed this enſtating of a ſucceſſion makes that power irrevocable

Sect. 6. *whether a Monarch by ſucceſſion may not be limited.*

revocable, during the continuance of that ſucceſſion, but it makes it neither greater nor leſs in the Succeſſor then was in his Progenitors, from whom he derives it.

Sect. 7. In a ſucceſſive Monarchy the Succeſſor holds by the original Right of him who is the root of ſucceſſion, and is *de jure* King the immediate inſtant after his Predeceſſors deceaſe: Alſo the people are bound to him, though they never take any Oath to his perſon. For as he commands in vertue of the original Right, ſo they are bound to obey by vertue of the original Covenant, and national Contract of ſubjection: the new oath taken either by King or People, is but a reviving of the old; that the Conſcience of it by renewing might be the more freſh and vigorous: it neither gives any new power, nor adds or detracts from the old, unleſs by common agreement an alteration be made; and ſo the foundation in that clauſe is new, which cannot be without the conſent of both parties.

CHAP. IIII.

Of the Diviſion of Monarchy into Simple and Mixed.

Sect. 1. *Simple and mixed Monarchy, what.* THe third diviſion is into Simple and Mixed. Simple is when the Government abſolute or limited is ſo intruſted in the hands of one, that all the reſt is by deputation from him;

him; ſo that there is no authority in the whole Body but his, or derived from him: And that One is either individually one Perſon, and then it is a ſimple Monarchy: Or one aſſociate Body, choſen either out of the Nobility, whence the Government is called a ſimple Ariſtocracy: or out of the Community, without reſpect of birth or ſtate, which is termed a ſimple Democracy. The ſupreme authority reſiding excluſively in one of theſe three, denominates the Government ſimple, which ever it be.

Now experience teaching People, that ſeveral inconveniences are in each of theſe, which is avoided by the other: as aptneſs to Tyranny in ſimple Monarchy: aptneſs to deſtructive Factions in an Ariſtocracy: and aptneſs to Confuſion and Tumult in a Democracy. As on the contrary, each of them hath ſome good which the others want, *viz.* Unity and ſtrength in a Monarchy, Counſel and Wiſedom in an Ariſtocracy; Liberty and reſpect of Common Good in a Democracy. Hence the wiſedom of men deeply ſeen in State matters, guided them to frame a mixture of all three, uniting them into one Form, that ſo the good of all might be enjoyed, and the evil of them avoided. And this mixture is either equal, when the higheſt command in a State by the firſt Conſtitution of it is equally ſeated in all three; and then (if firm Union can be in a mixture of Equality) it can be called by the name of neither of them, but by the general ſtile of a *Mixed State*:

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or if there be priority of Order in one of the three, (as I think there must be, or else there can be no Unity) it may take the name of that which hath the precedency. But the firmer Union is, where one of the three is predominant and in that regard gives the denomination to the whole: So we call it a *Mixed Monarchy*, where the primity of share in the supreme power is in one.

Sect. 2. *What it is which constitutes a mixed Monarchy.*

Now I conceive to the constitution of mixed Monarchy (and so proportionately it may be said of the other;)

Pos. 1. 1. The Soveraign power must be originally in all three, *viz.* If the composition be of all three, so that one must not hold his power from the other, but all equally from the fundamental Constitution: for if the power of one be Original, and the other Derivative, it is no mixture, for such a Derivation of power to others is in the most simple monarchy: Again, the end of mixture could not be obteyned; for why is this mixture framed, but that they might confine each other from exorbitance, which cannot be done by a derivate power, it being unnatural that a derived power should turn back, and set bounds to its own beginning.

Pos. 2. 2. A full equality must not be in the three estates, though they are all sharers in the supreme Power; for if it were so, it could not have any ground in it to denominate it a Monarchy, more than Aristocracy or Democracy.

3. A

3. A power then must be sought where- Pos. 3.
with the Monarch must be invested, which is not so great as to destroy the mixture; nor so titular as to destroy the Monarchy; which I conceive may be in these particulars.

1. If he be the Head and Fountain of the power which governs and executes the established Laws, so that both the other States as well *conjunctim* as *divisim*, be his sworn subjects, and owe obedience to his commands, which are according to established Laws.

2. If he hath a sole or chief power in capacitating and putting those persons or societies in such States and conditions, as whereunto such Supreme Power by the foundations of the Government doth belong, and is annexed: so that though the Aristocratical and Democratical Power which is conjoyned to his, be not from him: yet the definement and determination of it to such persons is from him, by a necessary consecution.

3. If the power of convocating or causing to be put in existence, and dissolving such a Court or Meeting of the two other estates as is authoritative, be in him.

4. If his authority be the last and greatest, though not the sole, which must establish and add a *consummatum* to every Act. I say these or any of these put into one person makes that State Monarchical, because the other, though they depend not on him *quoad essentiam & actus formales*, but on the prime constitution of the Government, yet *quoad existentiam & determinationem ad subjecta*, they do.

The Supreme power being either the *Legiſlative* or the *Gubernative*, in a mixed Monarchy ſometimes the mixture is the ſeat of the *Legiſlative Power*, which is the chief of the two: The power of Conſtituting Officers for Governing by thoſe Laws being left to the Monarch, or elſe the Primacy of both theſe Powers is joyntly in all three: For if the Legiſlative be in one, then the Monarchy is not mixed but ſimple, for that is the Superior; if that be in one all elſe muſt needs be ſo too. By Legiſlative I mean the power of making new Laws, if any new be needful to be added to the foundation, and the Authentick Power of interpreting the old; for I take it this is a branch of the Legiſlative, and is as great and in effect the ſame power.

Sect. 3. Every mixed Monarchy is limited, but it is not neceſſary that every limited ſhould be mixed; for the Prince in a mixed Monarchy, were there no definement of him to a Law but only this, that his Legiſlative Acts have no validity without the allowance and joynt Authority of the other; this is enough to denominate it exactly a limited Monarchy, and ſo much it muſt have if it be mixed. On the other ſide, if in the foundations of his Government he be reſtrained to any Law beſides his own Will, he is a limited Monarch, though that both the Legiſlative and Gubernative Power (provided he exceed not thoſe Laws) be left in his own hands: But then the Government is not mixed.

Now

Now concerning the extent of the Princes power and the Subjects duty in a mixed Monarchy, almoſt the ſame is to be ſaid which was before in a limited; for it is a general rule in this matter, ſuch as the Conſtitution of Government is, ſuch is the Ordinance of God, ſuch as the Ordinance is ſuch muſt our duty of Subjection be. No Power can challenge an obedience beyond its own meaſure, for if it might, we ſhould deſtroy all Rules and differences of Government, and make all abſolute and at pleaſure in every mixed Principality. Sect. 4. *How far the Princes power extends in a mixed Monarchy?*

Firſt, Look what Power is ſolely entruſted and committed to the Prince by the fundamental Conſtitution of the State, in the due execution thereof all owe full Subjection to him, even the other Eſtates, being but ſocieties of his Subjects, bound to him by Oath of Allegiance as to their Liege Lord. Aſſert. 1.

Secondly, Thoſe Acts belonging to the power which is ſtated in a mixed principle, if either part of that Principle or two of the three undertake to do them, it is invalid, it is no binding act; for in this caſe all three have a free Negative voice, and take away the priviledge of a Negative voice, ſo that in caſe of refuſal the reſt have power to do it without the third, then you deſtroy that third and make him but a looker on; ſo that in every mixed Government, I take it, there muſt be a neceſſity of concurrence of all three Eſtates in the production of Acts belonging to that power, which Aſſert. 2.

is committed in common to them: Else ſuppoſe thoſe Acts valid which are done by any *major* part, that is, any two of the three, then you put it in the power of any two, by a confederacy at pleaſure to diſanul the third, or ſuſpend all its Acts and make it a bare Cypher in Government.

Aſſert. 3. Thirdly, In ſuch a compoſed State, if the Monarch invade the power of the other two, or run in any courſe tending to the diſſolving of the conſtituted frame, they ought to employ their power in this caſe to preſerve the State from ruine; yea, that is the very end and fundamental aim in conſtituting all mixed Policies: Not that they by croſſing and jarring ſhould hinder the publick good, but that if one exorbitate, the power of reſtraint and providing for the publick ſafety ſhould be in the reſt; and the power is put into divers hands, that one ſhould counterpoiſe and keep even the other; ſo that for ſuch other Eſtates it is not only lawful to deny Obedience and Submiſſion to illegal Proceedings, as private men may, but it is their duty, and by the foundations of the Government they are bound to prevent diſſolution of the eſtabliſhed Frame.

Aſſert. 4. Fourthly, the Perſon of the Monarch, even in theſe mixed Forms (as I ſaid before in the limited) ought to be above the reach of violence in his utmoſt exorbitances: For when a People have ſworn Allegiance and inveſted a Perſon or Line with Supremacy, they have made it ſacred, and no abuſe can diveſt him of that power irrevocably communicated.

And

And while he hath power in a mix'd Monarchy, he is the univerſal Soveraign even of the other limiting States; ſo that being above them he is *de jure* exempt from any penal hand.

Fifthly, That one inconvenience muſt neceſſarily be in all mixed Governments, which I ſhewed to be in limited Governments, there can be no Conſtituted, Legal, Authoritative Judge of the fundamental Controverſies ariſing betwixt the three Eſtates. If ſuch do ariſe, it is the fatal diſeaſe of theſe Governments for which no Salve can be preſcribed; for the eſtabliſhed being of ſuch authority, would *ipſo facto*, overthrow the Frame and turn it into abſoluteneſs; ſo that if one of theſe or two ſay their power is invaded and the Government aſſaulted by the other, the Accuſed denying it, it doth become a Controverſie: Of this queſtion there is no legal Judge, it is a caſe beyond the poſſible proviſion of ſuch a Government. The accuſing ſide muſt make it evident to every mans Conſcience. In this caſe, which is beyond the Government, the Appeal muſt be to the Community, as if there were no Government: And as by Evidence Mens Conſciences are convinced, they are bound to give their utmoſt aſſiſtance; for the intention of the Frame in ſuch States, juſtifies the exerciſe of any power, conducing to the ſafety of the Univerſality and Government eſtabliſhed. Aſſert. 5.

PART

PART II.

OF THIS Particular MONARCHY.

CHAP. I.

Whether the Power wherewith our Kings are inveſted, be an Abſolute, or Limited and Moderated Power?

Sect. 1. HAving thus far proceeded in general, before we can bring home this to a ſtating of the great Controverſie which now our ſins, Gods diſpleaſure, and evil turbulent men have raiſed up in our lately moſt flouriſhing, but now moſt unhappy Kingdom; we muſt firſt look into the frame and compoſure of our Monarchy: For till we are fully reſolved of that, we cannot apply the former general Truths, nor on them ground the reſolution

lution of this ruining Contention.

Concerning the Eſſential Compoſure of this Government, that it is Monarchical is by none to be queſtioned; but the enquiry muſt be about the frame of it: And ſo there are ſeven great queſtions to be proſecuted.

Queſt. 1. ſtated.

Firſt, *Whether it be a Limited Monarchy or Abſolute?* Here the queſtion is not concerning Power in the Exerciſe, but the Root and being of it, for none will deny but that the way of Government uſed and to be uſed in this Realm, is a deſigned way: Only ſome ſpeak as if this Definement were an Act of Grace from the Monarchs themſelves, being pleaſed at the ſuit and for the good of the People, to let their Power run into act through ſuch a courſe and current of Law; whereas if they at any time ſhall think fit on great cauſes to vary from that way, and uſe the full extent of their power, none ought to contradict or refuſe to obey. Neither is it the queſtion, whether they ſin againſt God if they abuſe their power, and run out into acts of injury at pleaſure, and violate thoſe Laws which they have by publick Faith and Oath promiſed to obſerve; for none will deny this to be true even in the moſt abſolute Monarch in the world: But the point controverted is punctually this; *Whether the Authority which is inherent in our Kings, be boundleſs and abſolute, or limited and determined; ſo that the Acts which they do or command to be done without that compaſs and bounds, be not only ſinful in themſelves, but invalid and non-authoritative to others?*

Now

Sect. 2. Assert. Now for the determining hereof, I conceive and am in my judgment perſwaded, *that the Soveraignty of our Kings is radically and fundamentally limited,* and not only in the uſe and exerciſe of it; and am perſwaded ſo on theſe grounds and reaſons.

Reaſ. 1. Firſt, Becauſe the King's Majeſty himſelf, who beſt knows by his Council the nature of his own power, ſays, that *(a) the Law is the meaſure of his Power*; which is as full a conceſſion of the thing as words can expreſs. If it be the meaſure of it then his power is limited by it, for the meaſure is the limits and bounds of the thing limited. And in his anſwer to both the Houſes concerning the *Militia*, ſpeaking of the men named to him, ſays: *If more power ſhall be thought fit to be granted to them, than by Law is in the Crown it ſelf, His Majeſty holds it reaſonable that the ſame be by ſome Law firſt veſted in him, with power to transfer it to theſe perſons, &c.* In which paſſage it is granted that the Powers of the Crown are by Law, and that the King hath no more than are veſted in him by Law.

(a) *Declar. from Newmarket Ma.* 9. 1641.

Reaſ. 2. Secondly, Becauſe it is in the very Conſtitution of it mixed, as I ſhall afterwards make it appear, then it is radically limited; for as I ſhewed before, every mixed Monarchy is limited though not on the contrary, for the neceſſary connexion of other power to it, is one of the greateſt limitations: A ſubordination of Cauſes doth not ever prove the ſupreme Cauſe of limited virtue, a co-ordination doth always. Thirdly,

Thirdly, I prove it from the ancient, ordinary, and received denominations; for the King's Majesty is called our *Liege*, that is, *Legal Soveraign*, and we his *Liege*, that is, his *Legal Subjects*: What do these Names argue but that his Soveraignty and our Subjection is legal, that is, restrained by Law? Reas. 3.

Fourthly, Had we no other proof, yet that of *Prescription* were sufficient. In all Ages beyond Record, the Laws and Customs of the Kingdom have been the Rule of Government; Liberties have been stood upon, and Grants thereof, with limitations of Royal Power, made and acknowledged by *Magna Charta*, and other publick and solemn Acts; and no Obedience acknowledged to be due but that which is according to Law, nor claimed but under some Pretext and Title of Law. Reas. 4.

Fifthly, The very being of our Common and Satute Laws, and our Kings acknowledging themselves bound to govern by them, doth prove and prescribe them limited: For those Laws are not of their sole composing, nor were they established by their sole Authority, but by the concurrence of the other two Estates; so that to be confined to that which is not merely their own, is to be in a limited condition. Reas. 5.

Some there be which have lately written on this subject who take another way to prove our Government limited by Law, *viz.* by denying all absolute Government to be lawful; affirming that Absolute Monarchy is not at all Gods Ordinance, and so no lawful power secured *Pleaders for defensive Arms, Sect.* 2. & 4.

cured from resistance. What is their ground for this? God allows no man to rule as he list, nor puts mens lives in the pleasure of the Monarch, it is a power arbitrary and injurious. But I desire those Authors to consider that in absolute Monarchy there is not a resignation of men to any Will or List, but to the *reasonable Will of the Monarch*, which having the Law of Reason to direct it is kept from injurious Acts. But see for defence of this Government, *Part* 1. *Cap.* 2.

Sect. 3. Having set down those Reasons on which my judgment is settled on this side, I will consider the main Reasons whereby some have endeavoured to prove this Government to be of an Absolute Nature, and will shew their invalidity. Many Divines, perhaps inconsiderately, perhaps wittingly for self ends, have been of late years strong Pleaders for *Absoluteness* of Monarchical Power in this Land; and pressed Obedience on the Consciences of People in the utmost extremity, which can be due in the most absolute Monarchy in the world; but I seldom or never heard or read them make any difference of Powers, but usually bring their proofs from those Scriptures, where Subjection is commanded to the *Higher Powers*, and all resistance of them forbidden, and from Examples taken out of the manner of the Government of *Israel* and *Judah*, as if any were so impious to contradict those truths, and they were not as well obeyed in Limited Government as in Absolute; or as if Examples taken out of one Government

Government do always hold in another, unleſs their aim were to deny all diſtinction of Governments, and to hold all abſolute who have any where the ſupreme power conveyed to them.

Among theſe, I wonder moſt at that late diſcourſe of Dr. *Fern*, who in my judgment avoucheth things inconſiſtent, and evidently contradictory one to the other: For in his Preface he acknowledges our Obedience to be limited aud circumſcribed by the Laws of the Land, and accordingly to be yielded or denyed to the higher Power; and that *he is as much againſt an Abſolute Power in the King, and to raiſe him to an Arbitrary way of Government, as againſt reſiſtance on the Subjects part*; alſo *that his power is limited by Law, Sect.* 5. Yet on the other ſide he affirms, *That the King holds his Crown by Conqueſt*, that it is *deſcended to him by three Conqueſts, Sect.* 2. That we, even our Senate of Parliament, hath not ſo much plea for reſiſtance, as the ancient *Roman* Senate had under the *Roman* Emperours, whoſe power we know was abſolute, *Sect.* 2. That in Monarchy the judgment of many is reduced to one, that Monarchy ſettles the chief Power and final Judgment in one, *Sect.* 5. What is this but to confeſs him Limited, and yet to maintain him Abſolute?

Arguments on the contrary diſſolved.

But let us come to the Arguments. Firſt, ſay they, our Kings came to their Right by Conqueſt; yea ſays the Dr. by three Conqueſts, he means the *Saxons*, *Danes*, and *Normans*, as appears afterwards; therefore their Right is Abſolute.

Absolute. Here, that they may advance themselves, they care not though it be on the ruine of publick liberty, by bringing a whole Nation into the condition of Conquered Slaves: But to the Argument. 1. Suppose the Antecedent true, the Consequution is not always true; for, as is evident before in the first Part, all Conquest doth not put the Conqueror into an absolute Right. He may come to a Right by Conquest, but not sole Conquest, but a Partial, occasioning a Right by final Agreement, and then the Right is specificated by that fundamental Agreement: Also he may by Sword prosecute a claim of another nature, and in his war intend only an acquiring of that claimed Right, and after Conquest rest in that. Yea farther, he may win a Kingdom merely by the Sword and enter on it by Right of Conquest; yet considering that Right of Conquest hath too much of force in it to be safe and permanent, he may think Conquest the best mean of getting a Kingdom, but not of holding, and in wisdom for himself and Posterity, gain the Affections of the People by deserting that Title, and taking a new by Politick Agreement, or descend from that Right by fundamental grants of liberties to the People, and limitations to his own power: But these things I said in effect before in the first part, only here I have recalled them. to shew what a *non sequitur* there is in the Argument. But that which I chiefly intend is to shew the Infirmity or Falshood of the Antecedent; it is an Assertion most untrue in it self and pernicious to the State.

State: Our Princes profeſs no other way of coming to the Crown, but by right of ſucceſſion to rule free ſubjects in a legal Monarchy. All the little ſhew of proof theſe Aſſerters have, is from the root of ſucceſſion. So *William* commonly called the Conquerour. For, that of the *Saxons* was an expulſion not a Conqueſt, for as our hiſtories record, They coming into the Kingdom drove out the Britains, and by degrees planted themſelves under their Commanders; and no doubt continued the freedom they had in *Germany*: unleſs we ſhould think that by conquering they loſt their own Liberties to the Kings, for whom they conquered and expelled the Britiſh into *Wales*. Rather I conceive, the Original of the ſubjects liberty was by thoſe our fore-fathers brought out of *Germany*: Where, as *Tacitus reports, nec Regibus infinita aut libera poteſtas*: Their Kings had no abſolute but limited power: and all weighty matters were diſpatched by general meetings of all the Eſtates. Who ſees not here the antiquity of our Liberties and frame of Government? ſo they were governed in *Germany*, and ſo here to this day, for by tranſplanting themſelves, they changed their ſoyl; not their manners and Government: Then, that of the *Danes* was indeed a violent Conqueſt; and, as all violent rules, it laſted not long; when the Engliſh expelled them they recovered their Country and Liberties together. Thus it is clear, the Engliſh Liberty remained to them till the *Norman* Invaſion, notwith-

Tacit. de Morib. German. Sect. 3. & 5.

ſtanding that Daniſh Interruption. Now for Duke *William*, I know nothing they have in him but the bare Stile of Conqueror, which ſeems to make for them: The very truth is and every intelligent reader of the Hiſtory of thoſe times will atteſt it, that Duke *william* pretended the grant and gift of King *Edward* who died without children, and he came with forces into this Kingdom, not to Conquer, but make good his Title againſt his enemies: his end of entring the Land was not to gain a new abſolute Title, but to vindicate the old limited one, whereby the Engliſh *Saxon* Kings his Predeceſſors held this Kingdom. Though his Title was not ſo good as it ſhould be, yet it was better than *Haroldſ*, who was only the Son of *Goodwin*, Steward of King *Edwards* houſe; Whereas *William* was Couſen to *Emma* mother to the ſaid King *Edward*; by whom he was adopted; and by ſolemn promiſe of King *Edward* was to ſucceed him: Of which promiſe *Harold* himſelf became ſurety, and bound by oath to ſee it performed: Here was a fair Title, eſpecially *Edgar Athelinz* the right Heir being of tender age, and diſaffected by the people. Neither did he proceed to a full Conqueſt, but after *Harold* who uſurped the Crown was ſlain in battle, and none to ſucceed him, the Throne being void, the people choſe rather to ſubmit to *William* and his Title, then endure the hazzard of ruining War, by oppoſing him, to ſet up a new King: It is not to be imagined, that ſuch a Realm as *England* could be conquered by ſo few,

Cambden. Britan. Norman.

few, in ſuch a ſpace, if the peoples voluntary acceptance of him and his claim had not facilitated and ſhortned his undertaking. Thus we have it related in Mr. *Camden*, that before *Harold* uſurped the Crown, moſt men thought it the wiſeſt Policy to ſet the Crown on *Williams* head, that by performing the Oath and a promiſe, a War might be prevented: And that *Harold* by aſſuming the Crown, provoked the whole Clergy and Eccleſiaſtical State againſt him: and we know how potent in thoſe days the Clergy were in State-affairs: Alſo that after that one battle fought wherein *Harold* was ſlain, he went to *London*, was received by the *Londoners*, and ſolemnly inaugurated King, as unto whom by his own ſaying the Kingdom was by Gods Providence appointed, and by vertue of a gift from his Lord and Couſen King *Edward*, the glorious, granted; ſo that after that battel the remainder of the War was diſpatched by Engliſh Forces and Leaders. But ſuppoſe he did come in a Conqueror, yet he did not eſtabliſh the Kingdom on thoſe terms, but on the old Laws, which he reteyned and authorized for himſelf and his Succeſſors to govern by. Indeed after his ſettlement in the Kingdom, ſome *Norman* Cuſtoms he brought in, and to gratifie his Soldiers diſpoſſeſſed many Engliſh of their eſtates, dealing in it too much like a Conqueror: but the tryal by twelve men, and other fundamentals of Government, wherein the Engliſh freedom conſiſts, he left untouched, which have remain-

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ed till this day : On the ſame Title he claimed and was inaugurated, was he King which was a title of rightful ſucceſſion to *Edward* : therfore he was indeed King not as Conqueror, but as *Edwards* Succeſſor, and on the ſame right as he and his Predeceſſors held the Crown. As alſo by the grant of the former Laws and form of Government, he did equivalently put himſelf and his Succeſſors into the State of legal Monarchs, and in that Tenure have all the Kings of this Land held the Crown till this day, when theſe men would take up, and put a Title of Conqueſt upon them, which never was claimed or made uſe of by him who is the firſt root of their ſucceſſion.

Sect. 4. Another reaſon which they produce is the ſucceſſive nature of this Monarchy : for with them, to be elective and limited, and to be ſucceſſive and abſolute, are equipollent : They conceive it impoſſible that a Government ſhould be Hereditary and not abſolute : But I have enough made it appear, *Part.* 1. *Chap.* 2. *Sect.* 6. That ſucceſſion doth not prove a Monarchy abſolute from limitation, though it proves its abſolution from interruption and diſcontinuance, during the being of that ſucceſſion to which it is defined. And that which they object that our Kings are actually ſo before they take the Oath of governing by Law, and ſo they would be, did they never take that Oath ; wherefore it is no Limitation of their royal power, is there alſo

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anſwered in the next *Sect.* and that ſo fully, that no more need be ſaid. The ſame Law which gives the King his Crown immediately upon the deceaſe of his Predeceſſor, conveys it to him with the ſame Determinations and Prerogatives annexed, with which his Progenitors enjoyed it, ſo that he entring on that Original Right, his ſubjects are bound to yeild obedience, before they take any Oath: And he is bound to the Laws of the Monarchy, before he actually renews the bond by any Perſonal Oath. There is yet another argument uſually brought to this purpoſe, taken from the Oath of Allegiance: but of that I ſhall have occaſion to ſpeak hereafter.

CHAP. II.

Suppoſing it be in the Platform limited, wherein, and how far forth it is limited and defined. Queſt. 2.

I Conceive it fundamentally limited in five Particulars. Firſt, in the whole latitude of the *Nomothetical* Power; ſo that their power extends not to eſtabliſh any Act, which hath the Being and ſtate of a Law of the Land: nor give an authentick ſenſe to any law of doubtful and controverted meaning, ſolely and by themſelves, but together with the concurrent Authority of the two other Eſtates in Parliament. Poſſ. 1.

Pos. 2. Secondly, in the Governing Power, there is a confinement to the Fundamental Common Laws, and to the superstructive Statute Laws, by the former concurrence of Powers enacted, at to the Rule of all their Acts and Executions.

Pos. 3. Thirdly, in the power of constituting Officers, and means of governing; not in the choice of Persons, for that is intrusted to his Judgment, for ought I know, but in the constitution of Courts of Judicature: For as he cannot Judge by himself or Officers, but in Courts of Justice; so those Courts of Justice must have a constitution by a concurrence of the three Estates: They must have the same power to constitute them, as the Laws which are dispensed in them.

Pos. 4. Fourthly, in the very succession; for though succession hath been brought as a *medium* to prove the absoluteness of this Government, yet if it be more throughly considered, it is rather a proof of the contrary; and every one who is a successive Monarch is so far limited in his power, that he cannot leave it to whom he pleases, but to whom the Fundamental Law concerning that succession hath designed it. And herein though our Monarchy be not so far limited as that of *France* is said to be, where the King cannot leave it to his Daughter, but to his Heir-male, yet restrained it is; so that should he affect another more, or judge another fitter to succeed, yet he cannot please himself in this, but is limited to the next Heir born, not adopted or deno-

denominated: which was the caſe 'twixt Queen *Mary* and Lady *Jane*.

Laſtly, in point of Revenue, wherein their Power extendeth not to their Subjects Eſtates; by Taxes and Impoſitions to make their own what they pleaſe, as hath been acknowledged by *Magna Charta*, and lately by the *Petition of Right*, the caſe of *Ship-mony*, *Conduct mony*, *&c.* Nor, as I conceive, to make an Alienation of any Lands, or other Revenues annexed by Law to the Crown. I meddle not with perſonal limitations, whereby Kings, as well as private men, may limit themſelves by Promiſe and Covenant, which being particular, bind only themſelves; but of thoſe which are radical, and have continued during the whole current of ſucceſſion from unknown times. Other limitations, it is likely, my be produced by thoſe who are skilful in the Laws: but I believe they will be ſuch as are reducible to ſome of theſe which I take to be the principal and moſt apparent limitation of this monarchy, and are a moſt convincing induction to prove my Aſſertion in the former Chapter, *That this Monarchy, in the very Mold and Frame of it, is of limited conſtitution.*

CHAP. III.

Queſt. 3. *Whether it be of a Simple or Mixed Conſtitution.*

Sect. 1. WHen the Government is ſimple, when mixed; alſo where the mixture muſt be, which denominates a mixed Government, is explained *Part* 1. *Cap.* 3. Now I conceive it a clear and undoubted Truth, that the Authority of this Land is of a compounded and mixed nature in the very root and conſtitution thereof. And my judgment is eſtabliſhed on theſe grounds.

Reaſ. 1. *Anſwer to the* 19. *Propoſit.* Firſt, It is acknowledged to be a Monarchy mixed with Ariſtocracy in the Houſe of Peers, and Democracy in the Houſe of Commons. Now (as before was made appear in the firſt Part) it is no mixture which is not in the Root and Supremacy of Power: for though it haue a ſubordination of inferiour Officers, and though the Powers inferiour be ſeated in a mixed ſubject, yet that makes it not a mixed Government; for it is compatible to the ſimpleſt in the world, to have ſubordinate mixtures.

Reaſ. 2. Secondly, that Monarchy where the ligiſlative power is in all three, is in the very Root and Eſſence of it compounded and mixed of thoſe three; for that is the height of power, to which the other parts are ſubſequent and ſubſervient: ſo that where this reſideth in

in a mixed ſubject, that is, in three diſtinct concurrent Eſtates, the conſent and concourſe of all moſt free, and none depending on the will of the other, that Monarchy is in the moſt proper ſenſe and in the very modell of it of a mixed conſtitution: but ſuch is the ſtate of this Monarchy, as appears in the former queſtion, and is ſelf-apparent.

Thirdly, that Monarchy, in which three Eſtates are conſtituted, to the end that the power of one ſhould moderate and reſtrain from exceſs the power of the other, is mixed in the root and eſſence of it: but ſuch is this, as is confeſſed in the anſwer to the ſaid Propoſitions. The truth of the *major* will appear, if we conſider how many ways proviſion may be made in a Political Frame to remedy and reſtrain the exceſſes of monarchy. I can imagine but three ways. Firſt, by conſtituting a legal power above it, that it may he regulated thereby, as by an over-ruling power: Thus we muſt not conceive of our two Houſes of Parliament, as if they could remedy the exorbitances of the Prince by an Authority ſuperiour to his; for this were to ſubordinate him to the two Houſes, to ſet a ſuperiour above the Soveraign, that is, to deſtroy the being of his Monarchial Power. Secondly, by an original conveyance unto him of a limited and legal power, ſo that beyond it he can do no poteſtative Act; yet conſtituting no formal legal power to refrain or redreſs his poſſible exorbitances; here is limitation without mixture of another conſtitu- Reaſ. 3.

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ted power: As the former of these overthrows the power of the Soveraign, so this makes no provision for the indemnity of the people. Thirdly, now the never enough to be admired wisedom of the Architects and Contrivers of the frame of Government in this Realm (who ever they were) have found a third way, by which they have conserved the Soveraignty of the Prince; and also made an excellent provision for the Peoples freedom, by constituting two Estates of men, who are for their condition Subjects, and yet have that interest in the Government, that they can both moderate and redress the excesses and illegalities of the Royal power, which (I say) cannot be done, but by a mixture, that is, by putting into their hands a power to meddle in acts of the highest function of Government; a power not depending on his will, but radically their own, and so sufficient to moderate the Soveraigns power.

Sect. 2. Now what can reasonably be said in opposition to these grounds, proving a fundamental mixture, I cannot devise. Neither indeed is a mixture in the Government denied by the greatest Patrons of irresistibility; only such a mixture they would fain make it, which might have no power of positive resistence. I will therefore set down what they probably may or do object to this purpose, and will shew the invalidity thereof.

First,

First, this mixture ſeems not to be of diſtinct powers, but of a Power and a Counſel; authority in the Prince to give power to Acts, and counſel in the two Houſes to adviſe and propoſe wholſom Acts; as if the royal power alone did give life to the Law: only he is defined in this power, that he cannot animate any Act to the being of a Law, but ſuch as is propoſed unto him by this great and Legiſlative Counſel of Parliament. *Sol.* This were probable, ſuppoſing the Parliament were only in the nature of a Counſel; but we know it it is alſo a Court, the *High Court of Parliament:* Now it is evident that a Court is the ſeat and ſubject of Authority and Power, and not barely of counſel and advice. Object. 1.

Secondly, the two Houſes together with the King, are the ſupreme Court of the Kingdome; but taken diviſely from the King, it is no Court, and conſequently hath no power. *Sol.* Suppoſe them no entire Court divided from the King, yet they are two Eſtates of the three which make up the ſupreme Court; ſo that they have a power and authority, though not complete and ſufficing to perfect an act, without the concourſe of the third: For it appears by the Acts of that Court, that every of the three Eſtates hath a Legiſlative Power in it; every Act being enacted by the Kings moſt excellent Majeſty, and by the *Authority of the Lords and Commons aſſembled in Parliament.* Object. 2.

Thirdly,

Sect. 3. Object. 3. Thirdly, they have an authority, but in ſubordination to the King, and derived from him, as his Parliament. Indeed this is a main Queſtion, and hath very weighty Arguments on both ſides, *vix. Whether the authority of both the Houſes be a ſubordinate authority, and derived from the King as its original?* Three Reaſons ſeem ſtrong for the affirmative: First, becauſe it is his Parliament, ſo called and acknowledged: If his court, then the power whereby they are a Court is his power, derived from him, as the power of other Courts is. Secondly, becauſe he hath the power of calling and diſſolving it. Thirdly, becauſe he is acknowledged in the Oaths of Allegiance and Supremacy to be the Head, and of ſupreme authority in the Kingdom, and all ſubject to him.

Whether the authority of the two Houſes be derived from the King?

Treatiſe entituled, A fuller Anſwer to Dr. *Ferne.* And whereas ſome make anſwer, that he is *Singulis major*, but *Univerſis minor*, ſo the Anſwerer to Doctor *Ferne*, I wonder that the Propoſition of the Obſervator, that the King is *Univerſis minor*, ſhould be ſo much exploded. Every member *ſeorſim* is a ſubject, but all *collectim* in their houſes are not: And he ſays ſimply, the Houſes are co-ordinate to the King, not ſubordinate; that the Lords ſtile, *Comites*, or *Peers*, implies in Parliament a co-ordinative ſociety with his Majeſty in the Government. I conceive this Anſwerer to avoid one extreme, falls on another; for this is a very overthrow of all Monarchy, and to reduce all Government to

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Democracy; For look where the *apex poteſtatis* is, there is the Government. Alſo it is againſt Common Reaſon: For the King, is he not King of the Kingdom? and what is the Kingdom but all united? all the particulars knit together in one body politick? ſo that if he be King of the Kingdom, he is *Univerſis major* too; for the King is *major*, and the Kingdom is the united univerſe of the People. Thus thoſe expreſſions are ſome of them falſe, ſome though *ſecundum quid* true; yet ſpoken ſimply, and in that manner, are ſcandalous and incompatible to Monarchy. Thus you ſee what may be ſaid on the one ſide, to prove the King to be the original of all power, even of that which is in the Houſes of Parliament aſſembled.

On the other ſide are as weighty Arguments to prove the contrary, *viz.* That the two Houſes authority is not dependent, nor derived from the Royal Power. Firſt, the authority of the Houſes being Legiſlative, is the ſupreme, and ſo cannot be derived. Three concurrent powers producing one ſupreme act, as con-cauſe, joint cauſes of the ſame higheſt effect cannot have a ſubordination among themſelves in reſpect of that caſualty; it not being imaginable how a power can cauſe the ſupreme effect, and yet be a ſubordinate and derived power. Secondly, the end of conſtituting theſe two Eſtates being the limiting and preventing the exceſſes of the third, their power muſt not be totally dependent and derived from the third, their power

power must not be totally dependent and derived from the third, for then it were unsuitable for the end for which it was ordained: For to limit an Agent by a power subordinate and depending on himself is all one as to leave him at large without any limitation at all. Thirdly, that which hath been spoken of a mixed Monarchy doth fully prove that the two other powers which concur with the Monarch, to constitute the mixture, must not be altogether subordinate to it, and derived from it. I must profess these Reasons to prevail with me, that I cannot conceive how the authority of the two Houses can in the whole being of it, be a dependent and derived power.

Sect. 4. *Resolution of the Question.*

That we may find out the truth amidst this potent contradiction of both sides, recourse must be had to the Architecture of this Government, whereof I must declare my self to be so great an Admirer, that whatever more than humane wisdom had the contriving of it, whether done at once, or by degrees found out and perfected, I conceive it unparallel'd for exactness of true policy in the whole world; such a care for the Soveraignty of the Monarch, such a provision for the liberty of the People, and that one may be justly allayed, and yet consist without impeachment of the other, that I wonder how our Forefathers in those rude unpolished times could attain such an accurate composure. First then suppose a People, either compelled to it by conquest,

conqueſt, or agreenig to it by free conſent, Nobles and Commons ſet over themſelves by publick compact one Soveraign, and reſign up themſelves to him and his Heirs, to be governed by ſuch and ſuch fundamental Laws: there's a ſupremacy of power ſet up, though limited to one courſe of exerciſe. Secondly, then becauſe in all Governments after-caſes will come, it requiring an addition of Laws, ſuppoſe them covenanting with the Soveraign, that if cauſe be to conſtitute any other Laws, he ſhall not by his ſole power do that work, but they reſerve at firſt, or afterwards it is granted them (which is all one) a hand of concurrence therein, that they will be bound by no Laws, but what they joyn with him in the making of. Thirdly, becauſe though the Nobles may perſonally convene, yet the Commons (being ſo many) cannot well come together by themſelves to the doing of ſuch a work, it be alſo agreed, that every Corporation of the Commons ſhall have power to depute one or more to be for the whole in this publick legiſlative buſineſs, that ſo the Nobles by themſelves, the Commons by their Deputies aſſembling, there may be repreſentatively the whole body, having Comiſſion to execute that reſerved authority for eſtabliſhing new Laws. Fourthly, becauſe the occaſion and need of making new Laws, and authentick expounding the old, would not be conſtant and perpetual, and it would carry an appearance of a Government in which were three Heads and chief Powers, they did not ſtabliſh

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theſe Eſtates to be conſtantly exiſtent, but occaſionally, as the cauſes for which they were ordained ſhould emerge and happen to be. Fifthly, becauſe a Monarchy was intended, and therefore a Supremacy of power (as far as poſſible) muſt be reſerved for one, it was concluded that theſe two Eſtates ſhould be Aſſemblies of his Subjects, ſworn to him, and all former Laws; the new, which by agreement of Powers ſhould be enacted, were to be his Laws, and they bound to obey him in them aſſoon as eſtabliſhed: And being ſuppoſed that he who was to govern by the Laws, and for the furtherance of whoſe Government the new Laws were to be made, ſhould beſt underſtand when there was need, and the aſſembling and diſſolving the two Eſtates meeting, was a power of great priviledge, it was put into the Princes hand by writ to convocate and bring to exiſtence, and to adjourn and diſmiſs ſuch meetings. Sixthly, in proceſs of time Princes not caring much to have their Government looked into, or to have any power in act but their own, took advantage of this power of convocating thoſe Eſtates, and did more ſeldom then need required, make uſe of it; whereon proviſion was made, and a time ſet within which an Aſſembly of Parliament was to be had. Now when you have made theſe ſuppoſitions in your mind, you have the very model and platform of this Monarchy, and we ſhall eaſily find what to anſwer to the arguments before produced on either ſide. For firſt, it is his Parliament, becauſe an aſ-

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ſembly of his ſubjects, convocated by his Writ, to be his Counſel, to aſſiſt him in making Laws for him to govern by: yet not his, as other Courts are altogether deriving their whole authority from the fulneſs which is in him. Alſo his power of aſſembling and diſſolving proves him thus far above them, becauſe in their exiſtence they depend on him; but their power andauthority *quoad ſpecificationem*, the being and kind of it, is from original conſtitution: for they expect no Commiſſion and authority from him, more then for their meeting and reducing into exiſtence; but exiſting, they work according to the previledges of their conſtitution, their acts proceeding from their conjunct authority with the Kings, not from its ſubordination to the Kings. The oath of Allegiance binds them, and reſpects them as his ſubjects, to obey him, governing according to eſtabliſhed Laws: it ſuppoſes and is built upon the foundations of this Government, and muſt not be interpreted to overthrow them: he is thereby acknowledged to be ſupreme ſo far as to rule them by Laws already made; not ſo far as to make Laws without them, ſo that it is no derogation to their power; and I believe of theſe things none can make any queſtion. Therein conſiſts the accurate Judgment of the Contrivers of this Form, they have given ſo much into the hands of the ſoveraign, as to make him truly a Monarch; and they have reſerved ſo much in the hands of the two Eſtates, as to enable them to preſerve their own liberty.

these Estates to be constantly existent, but occasionally, as the causes for which they were ordained should emerge and happen to be. Fifthly, because a Monarchy was intended, and therefore a Supremacy of power (as far as possible) must be reserved for one, it was concluded that these two Estates should be Assemblies of his Subjects, sworn to him, and all former Laws; the new, which by agreement of Powers should be enacted, were to be his Laws, and they bound to obey him in them assoon as established: And being supposed that he who was to govern by the Laws, and for the furtherance of whose Government the new Laws were to be made, should best understand when there was need, and the assembling and dissolving the two Estates meeting, was a power of great priviledge, it was put into the Princes hand by writ to convocate and bring to existence, and to adjourn and dismiss such meetings. Sixthly, in process of time Princes not caring much to have their Government looked into, or to have any power in act but their own, took advantage of this power of convocating those Estates, and did more seldom then need required, make use of it; whereon provision was made, and a time set within which an Assembly of Parliament was to be had. Now when you have made these suppositions in your mind, you have the very model and platform of this Monarchy, and we shall easily find what to answer to the arguments before produced on either side. For first, it is his Parliament, because an assembly

ſembly of his ſubjects, convocated by his Writ, to be his Counſel, to aſſiſt him in making Laws for him to govern by: yet not his, as other Courts are altogether deriving their whole authority from the fulneſs which is in him. Alſo his power of aſſembling and diſſolving proves him thus far above them, becauſe in their exiſtence they depend on him; but their power andauthority *quoad ſpecificationem*, the being and kind of it, is from original conſtitution: for they expect no Commiſſion and authority from him, more then for their meeting and reducing into exiſtence; but exiſting, they work according to the previledges of their conſtitution, their acts proceeding from their conjunct authority with the Kings, not from its ſubordination to the Kings. The oath of Allegiance binds them, and reſpects them as his ſubjects, to obey him, governing according to eſtabliſhed Laws: it ſuppoſes and is built upon the foundations of this Government, and muſt not be interpreted to overthrow them: he is thereby acknowledged to be ſupreme ſo far as to rule them by Laws already made; not ſo far as to make Laws without them, ſo that it is no derogation to their power; and I believe of theſe things none can make any queſtion. Therein conſiſts the accurate Judgment of the Contrivers of this Form, they have given ſo much into the hands of the ſoveraign, as to make him truly a Monarch; and they have reſerved ſo much in the hands of the two Eſtates, as to enable them to preſerve their own liberty.

CHAP. IIII.

Queſt. 4. *How far forth it is mixed; and what parts of the Power are referred to a mixed Principle.*

I Shall be the briefer in this, becauſe an anſwer to it may be eaſily collected out of the precedent Queſtions: for he who knows how far this Government is limited, will ſoon diſcern how far it is mixed, for the Limitation is moſtly affected by the mixture: but diſtinctly, I conceive that there are three parts of the power referred to the joint concourſe of all the three Eſtates: So that either of them not conſenting or ſuſpending its influence, the reſt cannot reduce that power ordinarily and legally into act.

Three points of mixture.

1. The firſt is the Nomothetical power, underſtanding by it the power of making, and authentick expounding Laws, ſo that I believe an act cannot have the nature and form of a Law of the Land, if it proceed from any one, or two of theſe, without the poſitive concurrence of the third.

2. Secondly, The power of impoſing taxes and payments on mens eſtates: that the King by himſelf cannot aſſume mens properties by requiring impoſitions not granted him by Law, is often confeſſed: And that the other Eſtates cannot do it by themſelves, I conceive it is as unqueſtionable: For it were ſtrange to give that

that to the ſecundary and aſſiſting Powers, which is denied to the Soveraign and principal. If it be objected that every Corporation electing Deputies, and authorizing them to be *vice totius Communitatis*, do thereby grant them power, and entruſt them as to make Laws to bind them, ſo to diſpoſe of any part of their eſtate, either by rate or payment for the publick good: I anſwer, that they are by that deputation enabled as for one, ſo for the other; that is, according to the fundamental uſuage of the Kingdom; that is, by the joint conſent of the other eſtates; for though the Houſe of Commons is choſen by the people, and they repreſent the people, yet the repreſentation doth not give them a Power which was in the people. Now the people have no power to do an act which either directly, or by conſequence doth put it in the will and pleaſure of any one or two of the eſtates, to overthrow the other: but this power of opening and ſhutting the Purſe of the Kingdome is ſuch a power, that if it be in one or two of the Eſtates, without the third, then they by that power might neceſſitate that other to do any act, or diſable it from its own defence. This and the Legiſlative Power have ſuch a neerneſs, that they cannot be divided, but muſt be in the ſame ſubject: this is ſo great a power, that put it abſolutely in any Eſtate ſingle, you make that Eſtate in effect abſolute, making the reſt dependent and beholding to it for their ſubſiſtance.

3. Thirdly, the power of diſpatching the affairs of the Kingdom which are of greateſt difficulty and weight, the *ardua regni*, which the Writ for convocating the other Eſtates doth mention, ſuppoſing thereby that ſuch difficulties are not to be diſpatched by the power of one alone; for if they were, why then are the two other convocated to be aſſiſting? I acknowledge many matters of great moment may be done by the Regal power, and and in ſuch caſe it may be ſaid, that the other Eſtates are gathered *ad melius tranſigendum*, that the adviſe and ſenſe of the Community may be for direction. But I conceive there be two ſorts of affairs, which ought not to be tranſacted without the concurrence of all three. Firſt, ſuch as concern a publick ſafety and weal, ſo far as ſtable detriment or advantage comes to the whole body by the well or ill carriage thereof; for then there is the ſame reaſon as in making new Laws: For why was not the power of making any new Laws left in the hands of one, but reſerved for the concurrence of all three? ſave becauſe the end of the Architects was, that no new thing which was of ſo much concernment as the ſtable good and dammage of the Kingdom, ſhould be introduced without the conſent and advice of the whole: ſo that if any buſineſs be of that moment, that it is equipollent to a Law in the publick intereſt, it ſhould be managed by ſuch an authority and way as that is. Secondly, ſuch as introduce a neceſſity of publick charge, be it matter of War or elſe, if

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to the effecting of it the Purſe of the Kingdom be required, it is evident that it ought to be done by the concurrence of all, becauſe they only jointly (as appears before) have power to impoſe a publick charge on the Eſtates of men. And it were all one to put the power of our eſtates in the hands of one, as to put the power of ſuch undertakings in his ſole hands, which of neceſſity bring after them an engagement of publick expence.

CHAP. V.

How far forth the two Eſtates may oppoſe and reſiſt the will of the Monarch. Queſt. 5.

THis Queſtion is in the general already handled in the firſt Part, ſo that it will be eaſie to draw thoſe Anſwers to this particular here: Threfore conformably to what I then affirmed, I will anſwer this Queſtion by diverſe Poſitions. Sect. 1.

Firſt, the Monarch working according to his power, not exceeding the Authority which God and the Laws have conferred on him, is no way to be oppoſed either by any or all Subjects, but in conſcience to Gods ordinance, obeyed. This is granted on all ſides. Poſ. 1.

Secondly, if the will and command of the Monarch exceed the limits of the Law, it Poſ. 2.

ought for the avoidance of ſcandal and offence be ſubmitted to, ſo it be not contrary to Gods Law, nor bring with it ſuch an evil to our ſelves, or the publick, that we cannot be acceſſary to it by obeying. This alſo will find no oppoſition. Diſobedience in light caſes, in which we are not bound, makes an appearance of ſlighting the power, and is a diſreſpect to the perſon of the Magiſtrate. Therefore Chriſt, to avoyd ſuch offence, would pay tribute, though he tells *Peter*, He was free, and need not have done it.

Pof. 3. Thirdly, if he commands a thing which the Law gives no authority to command, and it be ſuch as would be inconvenient to obey, in this caſe obedience may lawfully be denied: This alſo findes allowance from them which ſtand moſt for royal power. Doctor *Fern* in his Preface acknowledges obedience to be limited and circumſcribed by the eſtabliſhed Laws of the Land, and accordingly to be yielded or denied. And *Sect.* 1. ſayes he, *We may and ought to deny obedience to ſuch commands of the Prince as are unlawful by the Law of God, yea by the eſtabliſhed Laws of the Land.* Here he ſayes more then we ſay; yea more then ſhould be ſaid, as appears in the ſecond Poſition: it is not univerſally true, that we ought.

Pof. 4. Fourthly, if he exceed the limits of the Law, and proceed in courſes illegal, means there are which it is agreed upon the Subjects may uſe to reduce him to legal Government; ſo much Doctor *Fern* allowes *Sect.* 4. Cries

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to God, Petition to the Prince, Denial of Obedience, Denial of Subſidy, *&c.*

Fifthly, but the point in controverſie is about poſitive and forcible reſiſtance, the lawfulneſs of which ſome do utterly deny, and others do as confidently maintain: but yet this point might be brought to a narrower ſtate then in the confuſed handling of it, it uſually is, by diſtinguiſhing 'twixt forcible reſiſtance uſed againſt the King's own perſon, or againſt inferiour Officers and Inſtruments, adviſing to, or executing the illegal commands. Poſ. 5.

For the firſt, as I have before expreſſed my ſelf, force ought not to be uſed againſt the perſon of the Soveraign, on any pretence whatever, by any or all his ſubjects; even in mixed and limited Monarchies: for if they be truly Monarchs, they are irrevocably inveſted with Soveraignty, which ſets their perſons above all lawful power and force. Alſo the Soveraign Power being ſo conferred on that perſon, the perſon and power cannot be really ſundred, but the force which is uſed to the one, muſt alſo violate the other: for power is not in the Soveraign as it is in inferiour Officers: as water is otherwiſe in the ſpring then in the channels, and pipes deriving it: It is not inſeperably in them, and therefore they offending, force may be uſed againſt them without violation of the Ordinance of Authority. Theſe Arguments prove it unlawful in any: That which the Dr. brings, I approve as ſtrong againſt all private force, Sect. 2.

where he allows defence againſt the perſon of the Prince himſelf, ſo far as to ward his blows, but not to return blows, no though for natural defence: becauſe the Commonwealth is concerned in his perſon, *Sect.* 2. And to divert a private evil, by inducing a publick, is unjuſt and unlawful: ſo that for this point of force againſt the perſon of the Prince: I think there ought to be no contention. If any have been ſo raſh to hold it lawful on theſe grounds, that the whole Kingdom is above him becauſe they make him King, and that by miſcarriage he may make a forfeiture, and ſo lay himſelf open to force; I do judge theſe grounds very inſufficient: unleſs the Kingdom reſerve a ſuperiority to it ſelf, or there be a fundamental clauſe of forfeiture on ſpecified cauſes; and then it is not properly a Monarchy: but all this hath been already handled in the general Part.

Secondly, for Inſtruments of oppreſſion of publick liberty if the wrong be deſtructive, and no other means of prevention, but force, be left, I am perſwaded it may be uſed, and poſitive reſiſtance made againſt them; and if I find any contradiction from the moſt rigid Patrons of Royalty, it muſt be only in this point. And here I muſt complain of the indiſtinct dealing of that Doctor in this matter; who mingleth both theſe points together: and ſcarce ſpeaks any thing to reſolve mens conſciences in this: But ſpeaks either in general, or elſe of force againſt the Princes own perſon; Whereas I think, the caſe which

which ſticks moſt on the conſcience at this time, is this latter: Of oppoſing, miſ-leading and miſ-imployed ſubjects, which he ſpeaks very little to. Nay, he ſeems to me, after all his diſclaiming of reſiſtance, to come home to us, and though ſparingly, yet to aſſent to lawfulneſs of reſiſtance in this point. For *Sect.* 2. ſpeaking of *Davids* guard of armed men: He ſays, It was to ſecure his perſon againſt the cut-throats of *Saul*, if ſent to take away his life, He means to ſecure it by force: for Soldiers are for force: He means no negative ſecuring by flight, for that may be done even againſt *Saul* himſelf: but he ſpeaks of ſuch a ſecuring which might be only againſt cut-throats. So then he grants ſecuring by force againſt theſe: But they went on *Sauls* command, and moſtly with his preſence. Again, in the inſtance of *Eliſha*, he ſeems to acknowledge lawfulneſs of perſonal defence againſt the ſudden and illegal aſſaults of Meſſengers, he means by force, for he ſpeaks of ſuch which he will not allow in publick, which can be underſtood of none, but by force: But it appears the Doctor in his whole diſcourſe hath avoided this point of reſiſtance of miſ-imployed ſubjects; which yet is the alone point which would have given ſatisfaction: for before it appears, we agree in all the reſt, and in this too for ought I know, he having not diſtinctly ſaid any thing againſt it.

Now concerning this caſe of forcible reſiſtance of inferiour perſons miſ-imployed to ſerve *Sect.* 3.

whether resistance of Instruments of will be lawful.

serve the illegal destructive commands of the Prince, I will do two things. 1. I will maintain my *Assertion* by convincing Arguments. 2. I will shew the invalidity of what is said against it.

Assert. 1. This then is my *Assertion*, The two Estates in Parliament may lawfully by force of Arms resist any persons or number of persons advising or assisting the King in the performance of a command illegal and destructive to themselves, or the publick.

Arg. 1. 1. Because that force is lawful to be used for the publick conservation, which is no resistance of the Ordinance of God; for that is the reason condemning the resistance of the Powers: Now this is no resistance of Gods Ordinance: For by it neither the person of the Soveraign is resisted, nor his power: Not his person, for we speak of Agents imployed, not of his own person: Nor his power; For the measure of that, in our Government, is acknowledged to be the Law: And therefore he cannot confer Authority to any beyond Law: so that those Agents deriving no Authority from him: are meer Instruments of his Will: Unauthorized persons; in their assaults, Robbers; and, as Dr. *Fern* calls them, Cut-throats. If the case be put, What if the Soveraign himself in person be present with such Assaylants, joyning his personal assistance in the execution of his Commands? It is much to be lamented, that the will of the Prince should be so impetuous in any subverting Act, as to hazzard his own person in the prosecution

proſecution of it. Yet ſuppoſing ſuch a caſe, all counſels and courſes muſt be taken, that no violence be offered to his perſon, and Profeſſion of none intended: But no reaſon the preſence of his perſon ſhould priviledge ruining Inſtruments from ſuppreſſion, and give them an immunity to ſpoil and deſtroy ſubjects, better than themſelves; His perſon being ſecured from wrong, His power cannot be violated in ſuch an Act, in which none of it can be conferred on the Agents. And ſure *David*, though he avoided laying hands or uſing any violence againſt the Perſon of *Saul*, and on no extremity would have done it: Yet for the Cut-throats about him, if no other means would have ſecured him, he would have reſcued himſelf by force from their outrage: Though *Saul* was in their company: Elſe what intended he by all that force of Soldiers: And his enquiry of God at *Keilah*: by which it is plain, He had an intent to have kept the place by force, if the people would have ſtuck to him: Neither is it to the purpoſe which the Dr. ſaies, *Sect.* 2. That his example was extraordinary, becauſe was he anointed and deſigned to ſucceed *Saul*, for that being but a deſignation, did not exempt him from the duty of ſubjection for the preſent, or leſſen it, as is plain by the great conſcience he made of not touching *Saul*: But he knew it was one thing to violate *Sauls* Perſon and Power, and another to reſiſt thoſe Inſtruments of Tyranny, the Cut-throats which were about him.

Secondly,

Arg. 2. Secondly, becauſe without ſuch power of reſiſtance in the hands of ſubjects, all diſtinction and limitation of Government is in vain: and all forms reſolve into abſolute and arbitrary; for that is ſo, which is unlimited; and that is unlimited, not only which hath no limits ſet, but alſo which hath no ſufficient Limits: for to be reſtrained from doing what I will, by a power which can reſtrain me no longer nor otherwiſe then I will, is all one, as if I were left at my own Will. I take this to be clear: Now it is as clear, that without this forcible reſiſtance of Inſtruments of uſurped power be lawful, no ſufficient limits can be to the Princes Will, and all Laws bounding him are to no purpoſe. This appears by enumerating the other means, Prayer to God, Petition to the Prince, Denial of Obedience, Denial of Subſidy, a moderate uſe of the power of denying, as Doctor *Fern* calls it: Theſe are all: but what are theſe to hinder, if a Prince be minded to overthrow all, and bring the whole Government to his will? For Prayer, and Petition, theſe are put in to fill up the number: They are no limitations, they may be uſed in the moſt abſolute monarchy; for denial of obedience, that may keep me from being an Inſtrument of publick ſervitude; but Princes Wills never want them which will yield obedience, if I deny it; Yea enough to deſtroy all the reſt, if nothing be left them but to ſuffer: Then for denial of Subſidy, if he may by thouſands of Inſtruments take all, or what

what he, or they pleaſe, and I muſt not reſiſt: what need he care whether the people deny or grant? If a Prince be taught, that he may do it, caſes and reaſons will ſoon be brought to perſwade him, that in them he may lawfully do it; as late experiences have given us too much Teſtimony: Thus it is apparent, that the denial of this Power of Reſiſtance of Inſtruments overthrows and make invalid all Government, but that which is abſolute: and reduces the whole World *de jure* to an abſolute ſubjection, that is, ſervitude: for the end of all conſtitution of moderate forms is not, that the ſupreme power might not lawfully exorbitate, but that it might have no power to exorbitate.

The Dr. is conſcious hereof; and therefore tells us in his *Sect.* 5. This is the very reaſon which is made for the Popes power of curbing and depoſing Kings in caſe of hereſie: becauſe elſe the Church, ſays the *Papiſt*, hath no means for the maintainance of the Catholick faith, and its own ſafety: But who ſees not the vaſt difference 'twixt theſe two? and that the ſame reaſon may be concluding here, which is apparently *non*-concluding there; For 1. They thereby would draw to the *Pope* an authoritative power: we no ſuch ſuperiour power: but only a power of reſiſtance for ſelf-conſervation, which nature and the Law of reaſon gives to every one; and may ſtand with the condition of ſubjection and inferiority. 2. They on this reaſon give the *Pope* a power over the very perſon of the

the King; we only of reſiſting of unauthorized invading deſtroyers, comming under the colour of an authority which is not in the Soveraign to be derived. 3. They prove a civil right for ſpiritual reaſons, we only for civil reaſons. 4. The Church and the Faith are conſtituted in their very formal being from Chriſt himſelf, who is the Head and great Shepheard immediately in his own perſon: and as it is his own family, ſo he keeps the power of preſerving it, in his own hands; having made direct and particular promiſes to aſſure us of their upholding againſt all ſubvertion, by his own power: ſo that here is aſſurance enough, without viſible means of force for a ſpiritual body, which lives by faith. But in a civil State there is no ſuch aſſurance, nor ſupporting promiſes: power only in the undefined being of it, being Gods immediate Ordinance, and not in this ſpecificated or determinate being: wherefore it hath no ſuch immediate proviſion made for its preſervation, no promiſe of a divine power for its ſtanding: but as it is left by God to mens wiſdom to contrive the frame, ſo to their providence to eſtabliſh means of preſervation. As the body is outward and Civil, ſo the upholding means muſt be ſuch; ſpiritual and infallibly aſſuring a Formed State hath not, as the Church and Faith have; if there be none of outward force and power neither, then none at all it hath, and is in ill caſe indeed. But there is an art full of venom, when a truth cannot be beaten down by juſt reaſoning, then

to

to make it odious by hateful compariſons: Arg. 3.
ſo in this caſe aſpertions are caſt, as if the Patrons of Reſiſtance did borrow the Popiſh and Jeſuitical grounds, and their Poſitions as dangerous to Kings, as the Jeſuits hell-bred and bloudy Principles: whereas it appears by all this diſcourſe, and I am perſwaded is written in Capital Letters in the very Conſcience of them which diſpitefully object it, that there is no congruity at all 'twixt their Doctrines, no more then 'twixt Light and Darkneſs.

Thirdly, becauſe ſuch power is due to a publick State for its preſervation, as is due to a particular perſon: But every particular perſon may lawfully by force reſiſt illegal deſtructive Miniſters, though ſent by the command of a legal Soveraign, provided no other means of ſelf-preſervation be enough. This Aſſumption the Doctor ſeems to grant; he denies it to be lawful againſt the perſon of the Prince, but in effect yields it againſt ſubordinate perſons: But the main is againſt the Propoſition, and the Doctor is ſo heavy a friend to the State that he thinks it not fit to allow it that liberty he gives every private man. But whoſe Judgment will concur with his herein, I cannot imagine; for ſure the Reaſon is greater, the publick ſafety being far more precious, and able to ſatisfie the dammages of a publick reſiſtance, then one particular man is of a private. But of this more in anſwer to his Reaſons.

Fourthly, becauſe it is a power put into Arg. 4.
the

the two Eſtates by the very reaſon of their Inſtitution; and therefore they not only may, but alſo ought to uſe it for publick ſafety; yea they ſhould betray the very truſt repoſed in them by the Fundamentals of the Kingdom if they ſhould not. An authority Legiſlative they have: Now to make Laws and to preſerve Laws are acts of the ſame power; yea, if three powers jointly have intereſt in making of Laws, ſurely either of theſe ſeverally have, and ought to uſe that power in preſerving them. Alſo that the authority which the Houſes have is as well given them for preſerving the Government by eſtabliſhed Laws, as for eſtabliſhment of Laws to govern by, is a truth proved by the conſtant uſe of their power to that end, in correcting the exorbitance of inferiour Courts, queſtioning delinquent Judges and Officers of State for violations, and much is done in this kind by the ſole authority of the Houſes, without the concurrence or expectance of Royal Power: ſo then, ſuppoſing they have ſuch an authority for ſafety of publick Government, to queſtion and cenſure inferiour Officers for tranſgreſſions, though pretending the Kings authority, can it be denied but that their authority will bear them out to uſe forcible reſiſtance againſt ſuch, be they more or fewer.

Arg. 5. Fifthly the Kings Warrant under his hand exempts not a Maleſactor from the cenſure of a Court of Juſtice, nor puniſhment impoſed by Law, but the Judge muſt proceed againſt him according to Law: for the Law is the Kings

Kings publick and authoritative Will; but a private Warrant to do an unlawful act, is his private and unauthoritative Will: wherefore the Judge ought to take no notice of such Warrant, but to deal with the Offender as no other then a private man. This proves that such Instruments thus illegally warranted, are not authorized; and therefore their violence may be by force resisted, as the assaults of private men, by any; and then much rather by the Houses of Parliament: which, supposing them divided from the King to have no complete authority, yet sure they have two parts of the greatest Legislative Authority. But I fear I shall seem superfluous, in producing Arguments to prove so clear a truth: Is it credible that any one will maintain so abject an esteem of their authority, that it will not extend to resistance of private men, who should endeavour the subversion of the whole frame of Government, on no other Warrant then the Kings Will and Pleasure? Must they be meerly passive? Is patience, and the denial of their Votes to a subvertion, all the opposition they must use, if a King (which God forbid) should on his Royal Pleasure send Cut-throats to destroy them as they sit in their Houses? Is all their authority (if the King desert them, or worse) no more then to Petition, and suffer; and by a moderate use of their power of denying, dissent from being willing to be destroyed? If power of resisting by force of subverters armed by the Kings Will (for by

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his Authority they cannot) be unlawful for them, all these absurdities must follow: yea, the vilest Instrument of Oppression, shewing but a Warrant from the King to bear him out, may range and rage all his days through a Kingdom, to waste and spoil, tax and distrain, and at utmost of his insolence must have no more done to him by the Parliament it self, then to stay his hand, as the basest Servant may his Masters, or the meanest Subject the Kings own hand; by the Doctors own confession. Consider then and admire, if any men of learning will deny this power of forcible resistance of Ministers, of subverting commands to be lawful. I have thus far confirmed my assertion, not that I find any openly opposing it, but because the Doctor and some other seem to have a mind that way, and do strike at it, though not professedly and in open dispute.

For the several proofs brought in behalf of Resistance, some of them prove as much as is here asserted; others are not to the purpose, Particularly, that of the Peoples rescuing *Jonathan* from his Fathers bloudy resolution proves lawfulness of hindering unreasonable self-destructive purposes, even in absolute Monarchies, if it prove any thing. That of *Uzza*'s thrusting out by the Priests, is not to the purpose: but *Davids* raising and keeping Forces about him, and his purpose at *Keilah*, proves the point directly, *viz.* Lawfulness of forcible resistance of Cut-throats, even though *Saul* himself were in presence: This the Doctor

Doctor ſees plainly, and therefore ſhuffles it off, by ſaying, *His example is extraordinary*; as if he were not a preſent Subject, becauſe he was deſigned by Gods revealed counſel to be a future King. And he confeſſes *Eliſha*'s example of ſhutting the door againſt the Kings Meſſenger proves perſonal defence againſt ſudden illegal aſſaults of Meſſengers, which is the thing in Queſtion.

Sect. 4. *Arguments on the contrary diſſolved.*

Let us now view the ſtrength of what is ſaid againſt reſiſtance, whether any thing comes home againſt this Aſſertion. The Doctors proofs from the old Teſtament come not to the matter: *Moſes*, and afterwards the Kings, were of Gods particular deſignation, ſetting them abſolutely over the people, on no condition or limitation; ſo that did they prove any thing, yet they concern not us, reſpecting a Government of another nature. But particularly, that of *Corah*, and the Princes rebelling againſt *Moſes*, is not to the matter; it was a reſiſtance of *Moſes* own perſon and Office; and doubtleſs penury of other proofs cauſed this and the reſt here to be alledged: For that, 1 *Sam.* 8. 18. how inconſequent is it, to ſay, the people ſhould cry unto the Lord, therefore they had no other means to help them but cries to God; though (I confeſs) in that Monarchy they had not. That ſpeech 1 *Sam.* 26. 9. was moſt true there, and is as true here, but not to the purpoſe, being ſpoken of the Kings own Perſon. But the main authority brought againſt

reſiſtence, is that *Rom.* 13. and, on that, Dr. *Fern* builds his whole diſcourſe: Let us therefore ſomething more largely conſider what is deduced out of that Text. Firſt, he ſuppoſes the King to be the *Supreme* in Saint *Peter*, and the *Higher power* in Saint *Paul*. Secondly, he collects *All perſons*, every ſoul is forbidden to reſiſt. Thirdly, that then was a ſtanding Senate, which not long before had the ſupreme Power in the Roman State: It is confeſſed; but that they could challenge more at that time when Saint *Paul* writ, then our great Counſel will or can, I deny: For that State devolving into Monarchy by Conqueſt, they were brought under an abſolute Monarchy, the Senate it ſelf ſwearing full ſubjection to the Prince; his Edicts and Acts of Will were Laws, and the Senates conſent only *pro forma*, and at pleaſure required. He who reads *Tacitus* cannot but ſee the Senate brought to a condition of baſeſt ſervitude, and all Laws and Lives depending on the will of the Prince: I wonder then the Doctor ſhould make ſuch a parallel. Indeed the Senate had been far more than ever our Parliaments were or ought to be: but now that was far leſs than our Parliament hath been, or (I hope) ever will be: They were become the ſworn Vaſſals of an abſolute Emperour, ours the ſworn Subjects of a Liege or Legal Prince. Fourthly, he ſays, then was more cauſe of Reſiſtance, when Kings were Enemies to Religion, and had overthrown Laws and Liberties. I anſwer, There were no cauſes for Reſiſtance: Not

Not their enmity to Religion, had they but a legal power, becauſe Religion then was no part of the Laws, and ſo its violation no ſubverſion of eſtabliſhed government. And for the overthrow of Laws and Liberties, that was paſt and done, and the government new, the Senate and all the reſt actually ſworn to abſolute Principality: Now an Ordinance of abſolute Monarchy was conſtituted, the ſacred bond of an Oath had made it inviolate. But what would he infer hence, all being granted him? Sure this he doth intend, That every ſoul among us, ſeveral, and conjoined in a Senate, muſt be ſubject for conſcience, muſt not reſiſt under pain of Damnation: All this, and what ever beſides he can juſtly infer out of that Text, we readily grant: But can any living man hence collect, that therefore no reſiſtance may be made to fellow-ſubjects, executing deſtructive illegal acts of the Princes will in a legal monarchy? Will he affirm that the Ordinance of God is reſiſted, and Damnation incurred thereby? Gods Ordinance is the power, and the Perſon inveſted with that power; but here force is offered to neither, as before I have made it appear. And herein we have B. *Bilſon* conſenting, where he ſays, that *the ſuperior power here forbidden to be reſiſted, is not the Princes will againſt his Laws but agreeing with his Laws.* I think the day it ſelf is not more clear than this ſatisfaction, to all that can be concluded out of that Text: ſo the foundation of all that diſcourſe is taken from it, if his intent

Bilſon of ſubjection p. 94, 280.

were thence to prove unlawfulneſs of Reſiſtance of Inſtruments of Arbitrarineſs in this Kingdom.

Let us alſo conſider the force of his Reaſons, whether they impugn this point in hand. He ſays, ſuch power of reſiſtance would be no fit means of ſafety to a State, but prove a remedy worſe then the diſeaſe. His Reaſons, firſt, becauſe it doth tend to the overthrow of that order, which is the life of a Commonwealth; it would open a way to People, upon the like pretences, to reſiſt, and even to overthrow power duly adminiſtred. 2. It may proceed to a change of government. 3. It is accompanied with the evils of Civil-War. 4. On the ſame ground the two Houſes proceed againſt the King, may the people proceed to reſiſtance againſt them; accuſing them not to diſcharge their truſt. Laſtly, ſeeing ſome muſt be truſted in every State; It is reaſon the higheſt and final truſt, ſhould be in the higheſt power. Theſe are his main reaſons on which he builds his concluſion againſt reſiſtance.

To his firſt, I ſay it were ſtrange if reſiſtance of deſtructive diſorder ſhould tend to the overthrow of Order: It may for the time diſturb, as Phyſick while it is in working diſturbes the natural body, if the peccant humors make ſtrong oppoſition: but ſure it tends to health, and ſo doth this reſiſtance of diſorder to Order, Neither would it open a way for the people to violate the Powers; for doing right can open no way to the doing of wrong,

wrong. If any wicked ſeditious ſpirits ſhould make uſe of the Vail of Juſtice to cover unnatural Rebellion: Shall a peoples right and liberty be taken from them to prevent ſuch poſſible abuſe? Rather let the foulneſs of ſuch pretences diſcover it ſelf, ſo God and good men will abhor them: ſuch Cloaks of Rebellion have in former ages been taken off, and the Authors brought to juſt confuſion, without the expence of the liberties of this Kingdom.

To the ſecond; muſt not Inſtruments be reſiſted, which actually intend, and ſeek a change of Government: becauſe ſuch reſiſtance may proceed to a change of Government? Is not an unlikely poſſibility of change to be hazarded, rather then a certain one ſuffered? But I ſay, It cannot proceed to a change of Government, unleſs it exceed the meaſure of lawful reſiſtance: yea it is impoſſible, that reſiſtance of Inſtruments ſhould ever proceed to a change of Government; for that includeth the greateſt reſiſtance and violation of the perſon and power of the Monarch, the lawfulneſs of which I utterly diſclaim.

Thirdly, it is not ever accompanied with the evils of Civil War: But when the Princes Will findes enough Inſtruments of their Countries ruine to raiſe it. And then the miſchief of that war muſt light on thoſe that raiſe it: But ſuppoſe it may enſue, yet a temporary evil of war is to be choſen rather than a perpetual loſs of liberty, and ſubverſion of the eſtabliſhed frame of a Government.

In the fourth, I deny the parity of reaſon: for the two Houſes are bodies conſtituted and endowed with legiſlative authority, and truſt of preſervation of the frame, by the Fundamentals of the Kingdom: which the people out of thoſe Houſes are not. Again the Government being compoſed of a three-fold conſenting power, one to reſtrain the exorbitance of another: All three together are abſolute and equivalent to the power of the moſt abſolute Monarch: The concurrent Will of all three, makes a Law, and ſo it is the Kingdoms Law.

To the laſt, I anſwer, In every State ſome muſt be truſted, and the higheſt truſt is in him who hath the Supreme power: Theſe two, the Supreme Truſt, and the Supreme Power are inſeperable: And ſuch as the power is, ſuch is the truſt: An abſolute power ſuppoſes an abſolute truſt: A Power allayed with the annexion of another power as here it is, ſuppoſeth a truſt of the ſame nature. A joint truſt, yet ſaving the ſupremacy of the Monarch ſo far forth as it may be ſaved, and not be abſolute, and the others authority nullified. It may be further argued: that it being the prerogative Royal to have the managing of the Sword, that is, legal force, in the Kingdom; none can, on any pretence whatever, uſe lawful force, either againſt him, or any, but by his Will: for it is committed to him by law, and to none but whom he aſſigns it to: ſo that the Laws of the Kingdom putting all power and force and Arms into his

How far forth the ſword is in the hand of the Monarch.

his truſt, have placed him, and all thoſe who ſerve him, in a ſtate of irriſiſtibleneſs in reſpect of any lawful force. This is a point much ſtood on and on this ground, the Parliament now aſſuming the diſpoſing of the *Militia* by an Ordinance, it is complained on, as a uſurping of what the Law hath committed to the King, as his Prerogative; the oppoſing of which Ordinance by a Commiſſion of *Array*, was the beginning of this miſerable Civil-War. I will diſtinctly lay down my Anſwer hereto, ſubmitting it to every impartial judgment.

1. The power of the Sword being for defence of the Laws, by puniſhing violators, and protecting ſubjects, it is ſubſervient to Government, and muſt needs belong to him who is entruſted with the Government, as a neceſſary requiſite without which he cannot perform his truſt. Poſ. 1.

2. As it is an appendix to the power of Government, and goes along with it, ſo it goes under the ſame terms: belonging to the Prince, as the other doth: *ſc.* abſolutely, to uſe at will, where the Monarchy is abſolute; or with limitation, to uſe according to Law, where the Monarchy is limited: ſo that, in this Government, the Arms and Sword of the Kingdom is the Kings, to a defined uſe committed to him; *viz.* For defence of the Laws and Frame of Government eſtabliſhed, and not for arbitrary purpoſes, or to enable Miniſters to execute commands of meer Will. Poſ. 2.

3. The

Pos. 3. 3. The two Houſes in virtue of the Legiſlative authority, in part reſiding in them, are intereſted in the preſervation of Laws and Government, as well as the King: And in caſe, the King ſhould miſimploy that power of Arms to ſtrengthen ſubverting Inſtruments: Or in caſe the Laws and Government be in apparent danger, the King refuſing to uſe the ſword to that end of preſervation for which it was committed to him: I ſay, in this caſe, the two Eſtates may by extraordinary and temporary Ordinance aſſume thoſe Arms, wherewith the King is entruſted, and perform the Kings truſt: And though ſuch Ordinance of theirs is not formally legal, yet it is eminently legal, juſtified by the very intent of the Architects of the Government, when for theſe uſes they committed the Arms to the King. And no doubt they may command the ſtrength of the Kingdom to ſave the being of the Kingdom: for none can reaſonably imagine the Architectonical Powers, when they committed the power of government and Arms to one to preſerve the Frame they had compoſed, did thereby intend to diſable any, much leſs the two Eſtates, from preſerving it, in caſe the King ſhould fail to do it in this laſt need. And thus doing the Kings Work, it ought to be interpreted as done by his Will: becauſe as the Law is his Will, ſo that the Law ſhould be preſerved is his Will, which he expreſſed when he undertook the Government: Tis his deliberate Will, and ought to be done, though at any time he oppoſe

oppoſe by an after-Will, for that is his ſudden Will, as Doctor *Fern* himſelf *Sect.* 1. doth teach us to diſtinguiſh.

CHAP. VI.

In what caſes the other Eſtates may, without or againſt the Kings Perſonal Conſent, aſſume the Arms of the Kingdom. Queſt. 6.

WHo ever were the Authors of that Book lately publiſhed, *ſtiled Scripture and Reaſon pleaded for defenſive Arms*, have laid new and over-large grounds for reſiſtance. Two Aſſertions they endeavour to maintain: Firſt, *thoſe Governours (whether ſupreme or others) who under pretence of authority from Gods Ordinance, diſturb the quiet and peaceable life in Godlineſs and Honeſty, are far from being Gods Ordinance in ſo doing*, Sect. 3. Secondly, *This Tyranny not being Gods Ordinance, they which reſiſt it even with Arms, reſiſt not the Ordinance of God.* Hereon, *Sect.* 4. they free Chriſtians, even in the Apoſtles time, and ſo under the Roman Emperours, or any other Government, from neceſſity of paſſive ſubjection in caſe of perſecution; affirming, that the Chriſtians in thoſe firſt Perſecutions, had they been ſtrong enough, might have uſed Arms for defence againſt the Tyranny of their Emperours. Sect. 1. *Whether it be lawful to take up Arms againſt the Magiſtrate, perverting his power to a wrong end.*

Their

Their ground is from the Reaſons uſed by the Apoſtle *Rom.* 13. where he commands ſubjection, and forbids reſiſtance to the higher power, becauſe *they are Gods ordinance, his Miniſters for praiſe to well-doers, for terror to evil-doers.* But I muſt profeſs my ſelf to diſſent from them in this opinion, conceiving that the Apoſtle in urging thoſe Reaſons drawn from the due ends of power, doth intend to preſs them to ſubjection by ſhewing them what benefit comes to men by authority in its due uſe; and not to ſhew them how far they are bound to be ſubject, and in what caſes they may reſiſt: For had he ſuch a meaning at that time, when the Governours did altogether croſs thoſe ends of their Ordination, he had taught them rather a Doctrine of Reſiſtance than Subjection: ſhall we conceive that he would preſs Subjection to Powers in the hands of Heathens and Perſecutors, if he had not intended they ſhould paſſively be ſubject unto them, even under thoſe Perſecutions? Rather I approve the received Doctrine of the Saints in antient and modern times, who could never find this licence in that place of the Apoſtle: and do concur with Maſter *Burroughs*, profeſſing againſt reſiſtance of authority, though abuſed: *if thoſe* (ſaies he) *who have power to make Laws, make ſinful Laws, and ſo give authority to any to force obedience we ſay here there muſt be either flying, or paſſive Obedience.* And again, *We acknowledge we muſt not reſiſt for Religion, if the Laws of the Land be againſt it.* But what do they ſay againſt this?

Anſw. to Dr. Fern Sect. 2.

this? In making ſuch Laws againſt Religion the Magiſtrates are not Gods ordinance; and therefore to reſiſt is not to reſiſt Gods ordinance; As an inferiour Magiſtrate, who hath a Commiſſion of power for ſuch ends, is reſiſtible if he exceed his Commiſſion, and abuſe his Power for other ends; ſo Princes being Gods Miniſters, and having a deputed Comiſſion from him to ſuch ends, *viz.* the promotion of godlineſs, Peace, Juſtice, if they pervert their power to contrary ends, may be reſiſted without violation of Gods ordinance. That I may give a ſatisfactory anſwer to this, which is the ſumm of their long diſcourſe, I muſt lay it down in ſeveral Aſſertions.

Aſſert. 1. Firſt, I acknowledge Gods ordinance is not only Power, but Power for ſuch ends, *ſc.* the good of the People.

Aſſert. 2. Secondly, it is alſo Gods ordinance, that there ſhould be in men, by publick conſent called thereto, and inveſted therein, a power to chooſe the means, the Laws, and Rules of government conducing to that end: and a power of Judging in relation to thoſe Laws, who be the well doers which ought to be praiſed, and who the evil doers who ought to be puniſhed. This is as fully Gods ordinance as the former; for without this the other cannot be performed.

Aſſert. 3. Thirdly, when they who have this final civil Judicature ſhall cenſure good men as evil doers; or eſtabliſh iniquity by a Law, to the encouragement of evil doers; in this caſe,

if

if it be a ſubordinate Magiſtrate doth it, appeal muſt be made (as Saint *Paul* did) to the ſupreme; if it be the ſupreme, which through miſtake or corruption doth miſ-cenſure, from whom there lies no Civil Appeal, then without reſiſtance of that Judgment we muſt paſſively ſubmit: And he who in his own knowledge of innocency or goodneſs of his cauſe ſhall by force reſiſt, that mean erects a Tribunal in his own heart againſt the Magiſtrates Tribunal; clears himſelf by a private Judgment againſt a publick, and executes his own ſentence by force againſt the Magiſtrates ſentence, which he hath repealed and made void in his own heart. In unjuſt Cenſures by the higheſt Magiſtrate, from whom there is no Appeal but to God, the ſentence cannot be oppoſed till God reverſe it to whom we have appealed: In the mean time we muſt ſuffer, as Chriſt did, notwithſtanding his Appeal, 1. *Pet.* 2. 23. and ſo muſt we notwithſtanding our Appeal, 1 *Pet.* 4. 19. for he did ſo for our example. If an Appeal to God, or a cenſure in the Judgment of the condemned might give him power of reſiſtance, none would be guilty, or ſubmit to the Magiſtrates cenſure any further then they pleaſe. I deſire thoſe Authors, before they ſettle their judgment in ſuch grounds (which I fear will bring too much ſcandal) to weigh theſe particulars: Firſt, their opinion takes away from the Magiſtrate the chief part of Gods ordinance, *ſc.* power of definitive judgment of Laws and Perſons, who are the good, and who the bad,

to

to be held ſo in Civil proceedings. Secondly, they juſtifie the Conſcience of Papiſts, Hereticks, and groſſeſt malefactors to reſiſt the Magiſtrate, in caſe they be perſwaded their cauſe is good. Thirdly, they draw men off from the commands of Patience under perſecution, and conforming to Chriſt and his Apoſtles, in their patient enduring without verbal or real oppoſition, though Chriſt could not have wanted power to have done it, as he tells *Peter*. Fourthly, they deprive the Primitive and Modern Martyrs of the glory of ſuffering, imputing it either to their ignorance or diſability. Fifthly, it is a wonder, that ſith in Chriſts and his Apoſtles time there was ſo much uſe of this power of reſiſtance, they would by no expreſs word ſhew the Chriſtians this liberty, but condemne reſiſtance ſo ſeverely. Sixthly there is in the caſe of the Parliament now taking up Arms no need of theſe offenſive grounds; Religion being now a part of our National Law, and cannot ſuffer but the Law muſt ſuffer with it.

Now to the propoſed Queſtion I anſwer, firſt Negatively, *ſc.* 1. It ought not to be done againſt all illegall proceedings, but ſuch which are ſubverſive and unſufferable. Secondly, not publick reſiſtance, but in exceſſes inducing publick evils: for to repel private injuries of higheſt nature with publick hazzard and diſturbance, will not quit coſt, unleſs in a private caſe the common Liberty be ſtrook at. Thirdly, not when the government

Sect. 2. 1. *When arms ought to be aſſumed.*

ment is actually ſubverted, and a new form (though never ſo injuriouſly) ſet up, and the People already engaged in an Oath of abſolute ſubjection: for the remedy comes too late, and the eſtabliſhment of the new makes the former irrevocable by any juſtifiable power, within the compaſs of that Oath of God: This was the caſe of the Senate of *Rome* in Saint *Paul*'s time. Secondly, affirmatively: I conceive three caſes when the other Eſtates may lawfully aſſume the force of the Kingdom, the King not joining, or diſſenting, though the ſame be by Law committed to him. Firſt when there is invaſion actually made, or imminently feared by a forraign power. Secondly, when by an inteſtine Faction the Laws and Frame of government are ſecretly undermined, or openly aſſaulted: In both theſe caſes the Being of the Government being endangered, their truſt binds, as to aſſiſt the King in ſecuring, ſo to ſecure it by themſelves, the King refuſing. In extreme neceſſities the liberty of Voices cannot take place, neither ought a *Negative Voice* to hinder in this exigence, there being no freedom of deliberation and choice, when the Queſtion is about the laſt end: Their aſſuming the ſword in theſe caſes is for the King, whoſe Being (as King) depends on the Being of the Kingdom; and being interpretatively his act, is no diſparagement of his Prerogative. Thirdly, in caſe the Fundamental Rights of either of the three Eſtates be invaded by one or both the reſt, the wronged

2. when they may be aſſumed.

may

may lawfully assume force for its own defence; because else it were not free, but dependent on the pleasure of the other. Also the suppression of either of them, or the diminishing of their Fundamental Rights, carries with it the dissolution of the Government: And therefore those grounds which justifie force to preserve its Being, allowes this case, which is a direct innovation of its Being and Frame.

CHAP. VII.

Where the Legal Power of Final judging in these cases doth reside, in case the three Estates differ about the same. Quest. 7.

Sect. 1. *The Question stated.*

IN this Question (for our more distinct proceeding) some things are necessarily to be observed. First, that we meddle not here with the judicature of Questions of inferiour nature; *viz.* such as are 'twixt subject and subject, or the King and a subject, in matter of particular right, which may be decided other way, without detriment of the publick Frame, or deminution of the priviledges of either of the three Estates. Secondly, difference is to be made even in the Questions of utmost danger: First, for it may be alledged to be either from without, by invasion of forrain Enemies; or by a confederacy of intestine subverters in which neither of the three Estates are alledged to be interested, and so the case may be judged without relation to either of them, or detriment to their priviledges. Here I conceive a greater latitude

of power may be given to ſome to judge without the other, for it infers not a ſubordination of any of the three to the other. Secondly, or elſe it may be alledged by one or two of the Eſtates againſt the other, that not contenting it ſelf with the Powers allowed to it by the Laws of the Government, it ſeeks to ſwallow up, or entrench on the priviledges of the other, either by immediate endeavours, or elſe by protecting and intereſſing it ſelf in the ſubverſive plots of other men. Thirdly, in this caſe we muſt alſo diſtinguiſh betwixt, firſt, authority of raiſing Forces for defence againſt ſuch ſubverſion, being known and evident: ſecondly, and authority of judging and final determining, that the accuſed Eſtate is guilty of ſuch deſign and endeavour of ſubverſion, when it is denied and proteſted againſt. This laſt is the particular in this Queſtion to be conſidered; not whether the People are bound to obey the authority of two, or one of the Legiſlative Eſtates in reſiſting the ſubverſive eſſaies of the other, being apparent and ſelf-evident; which I take in this Treatiſe to be clear. But when ſuch plea of ſubverſion is more obſcure and queſtionable, which of the three Eſtates hath the power of ultime and ſupreme judicature, by Vote or Sentence to determine it againſt the other; ſo that the People are bound to reſt in that determination, and accordingly to give their aſſiſtance, *eo nomine*, becauſe it is by ſuch power ſo noted declared?

Determination of the Queſtion.

For my part in ſo great a cauſe, if my earneſt deſire of publick good, and peace, may juſtifie

Justifie me to deliver my mind, I will prescribe to the very Question; for it includes a solecism in Government of a mixt temperature: To demand which Estate may challenge this final determination of fundamental Controversies arising betwixt them, is to demand which of them shall be absolute: For I conceive, that in the first part hereof, I have made it good, that this final utmost Controversie arising betwixt the three Legislative Estates, can have no legal constituted Judge in a mixed Government; for in such difference, he who affirms that the people are bound to follow the Judgment of the King against that of the Parliament, destroys the mixture into Absoluteness; And he who affirms that they are bound to cleave to the Judgment of the two Houses against that of the King resolves the Monarchy into Aristocracy or Democracy, according as he places this final Judgment. Whereas I take it to be an evident truth, that in a mixed Government no power is to be attributed to either Estate, which directly, or by necessary consequence, destroys the liberty of the other.

Yet it is strange to see, how in this Epidemical division of the Kingdom, the Abetters of both parts claim this unconcessible Judgment. But let us leave both sides, pleading for that which we can grant neither, and weigh the strength of their Arguments. Sect. 2.

Dissolution of Arguments placing it in the King.

First, Dr. *Fern* lays down two reasons, why this final Judgment should belong to the King. 1. Monarchy, says he, *Sect.* 5. settles the chief Power and final Judgment in one.

This *Poſition* of his can be abſolutely true no where but in abſolute Monarchies; and in effect, his Book knows no other than Abſolute Government. 2. Seeing ſome one muſt be truſted in every State, *It is reaſon*, ſays he, *Sect.* 5. *The higheſt and final truſt, ſhould be in the higher and Supreme Power.* I preſume by final truſt, he means the truſt of determining theſe Supreme and final diſagreements; and accordingly I anſwer: It is not neceſſary that any one ſhould be truſted with a binding power of Judicature in theſe caſes; for by the foundations of this Government, none is, yea, none can be truſted with it; for to intend a mixed Government, and yet to ſettle the laſt reſolution of all judgment in one, is to contradict their very intention. Neither in a conſtituted Government muſt we diſpoſe of powers according to the gueſs of our reaſon; for mens apprehenſions are various: The Dr. thinks this power fitteſt for the King; his Anſwerers judge it fitteſt for the two Houſes, and give their reaſons for it too. Powers muſt there reſide, where they are *de facto*, by the Architects of a Government placed: He who can bring a fundamental Act ſtating this Power in any, ſays ſomething to the matter; but to give our Conjectures where it ſhould be, is but to provide Fuel for Contention.

Diſſolution of the Arguments placing it in the two Houſes.

On the contrary, The Author of that which is called *A fuller Anſwer to that Dr.* hath two main Aſſertions placing this Judgment in the two Houſes.

1. The final and caſting reſult of this States Judg-

Judgment concerning what theſe Laws, dangers, and means of prevention are, reſides in the two Houſes of Parliament, ſays he, *p.* 10.

2. in this final reſolution of the States Judgment, the people are to reſt, *ibidem pag.* 14. Good Lord! What extreme oppoſition is between theſe two ſorts of men? I have, more than once, made it good, that theſe Aſſertions are deſtructive on both ſides: But I am rather perſwaded, that theſe Officious Propugners overdo their work, and give more to them whoſe cauſe they plead, than they ever intended to aſſume: Nay, rather give to every one their due, give no power to one of theſe three to cruſh and undo the other at pleaſure: But why doth this Anſwer give all that to the two Houſes which erewhile they would not ſuffer, when the Judges in the caſe of Ship-mony had given it to the King? Sure when they denied it to him, they did not intend to themſelves.

1. He tells us, In them reſides the reaſon of the State: And that the ſame reaſon and Judgment of the State which firſt gave this Government its Being, and Conſtitution; therefore all the people are to be led by it, and ſubmit to it, as their publick Reaſon and Judgment.

I anſwer, if by State, he mean the whole Kingdom; I ſay the reaſon of the two Houſes divided from the King, is not the reaſon of the Kingdom, for it is not the Kings Reaſon, who is the Head and Chief in the Kingdom. If by State be meant the People, then it muſt be granted, that as far forth as they repreſent them, their reaſon is to be accounted the reaſon

of the Kingdom; and doth bind ſo far forth as the publick reaſon of the Kingdom can bind, after they have reſtrained their reaſon and will to a condition of ſubjection: So that put caſe it be the reaſon of the State, yet not the ſame which firſt gave this Government its being; for then it was the reaſon of a State, yet free and to uſe their Reaſon and Judgment in ordaining a Government: But now the reaſon of a State bound by Oath to a Government, and not at liberty to reſolve again; or to aſſume a Supreme Power of judging, deſtructive to the frame of Government they have eſtabliſhed, and reſtrained themſelves unto. Their reaſon is ours, ſo far as they are an ordained repreſentative Body; but I have before demonſtrated, that in this frame, the Houſes could not be ordained a legal Tribunal to paſs Judgment in this laſt caſe; for then the Architects by giving them that Judicature, had ſubordinated the King to them, and ſo had conſtituted no Monarchy. 2. He argues, the Parliament being the Court of Supreme Judicature, and the Kings great and higheſt Council; therefore that is not to be denied to it, which inferior Courts ordinarily have power to do, *viz.* To judge matters of Right between the King and Subject: Yea, in the higheſt caſe of all, the King's power to tax the Subject in caſe of danger, and his being ſole Judge of that danger, was brought to cognizance, and paſſed by the Judges in the Exchequer. I anſwer, 1. There is not the ſame reaſon betwixt the Parliament and other Courts. In theſe the King is Judg, the Judges being

being deputed by him, and judging by his Authority; ſo that if any of his Rights be tryed before them, it is his own Judgment, and he judges himſelf; and therefore it is fit he ſhould be bound by his own Sentence: But in Parliament the King and People are Judges, and that not by an Authority derived from him, but originally inveſted in themſelves: So that when the two Eſtates judge without him in any caſe not prejudged by him, it cannot be called his Judgment, (as that of the other Courts, being done by his Authority;) and if he be bound by any Judgment of the two Eſtates without him, he is bound by an external power which is not his own; that is, he is ſubordinated to another power in the State where he is Supreme, which is contradictory. Secondly, in other Courts, if any caſe of Right be judged twixt him and the ſubject, they are caſes of particular Rights which diminiſh not Royalty if determined againſt him. Or if they paſs caſes of general Right, (as they did in that of Ship-mony) it is but declaratively to ſhew what is by Law due to one and the other; yet their Judgment is revocable, and liable to a repeal by ſuperior Court, as that was by Parliament. But if the King's Prerogatives ſhould be ſubjected to the judgment of the two Eſtates, the King diſſenting, then he ſhould be ſubject to a ſentence in the higheſt Court, and ſo irremediable; a Judicatory ſhould be ſet up to determine of the higheſt Rights without him, from which he could have no remedy. Thus main cauſes may be alledged, why, though other Courts do judg

his

his Rights, yet the two Eſtates in Parliament (without him) cannot; and it is from no defect in their power, but rather from the eminency of it, that they cannot. If one deputed by common conſent of three, doth by the power they have given them determine Controverſies between thoſe three, it is not for either of them to challenge right to judge thoſe caſes, becauſe one who is inferior to them doth it. Indeed if the power of the two Houſes were a deputed power, as the power of other Courts is, this Argument were of good ſtrength; but they being concurrents in a Supreme Court by a power originally their own, I conceive it hard to put the power of final Judgment in all Controverſies betwixt him and them excluſively or ſolely into their hands.

Sect. 3. *What to be done in ſuch a Contention?*

If it be demanded then, how this cauſe can be decided? and which way muſt the people turn in ſuch a contention? I anſwer, if the non-deciſion be tolerable it muſt remain undecided, whilſt the principle of legal deciſion is thus divided, and by that diviſion each ſuſpends the others power. If it be ſuch as is deſtructive, and neceſſitates a determination, this muſt be made evident; and then every perſon muſt aid that part, which in his beſt reaſon and judgment ſtands for publick good, againſt the deſtructive. And the Laws and Government which he ſtands for, and is ſworn to, juſtifies and bears him out in it, yea binds him to it.

FINIS.